

# Publicatieblad

## van de Europese Unie

# C 137

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in de Nederlandse taal

## Mededelingen en bekendmakingen

51e jaargang

4 juni 2008

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<sup>(1)</sup> Voor de EER relevante tekst

## II

(Mededelingen)

MEDEDELINGEN VAN DE INSTELLINGEN EN ORGANEN VAN DE EUROPESE  
UNIE

## COMMISSIE

**Goedkeuring van de steunmaatregelen van de staten in het kader van de bepalingen van de artikelen 87 en 88 van het EG-Verdrag****Gevallen waartegen de Commissie geen bezwaar maakt**

(Voor de EER relevante tekst)

(2008/C 137/01)

Datum waarop het besluit is genomen	30.1.2008
Nummer van de steunmaatregel	N 435/07
Lidstaat	Frankrijk
Regio	—
Benaming van de steunregeling en/of naam van de begunstigde	Soutien de l'Agence de l'innovation industrielle en faveur du programme MINimage
Rechtsgrondslag	Régime N 121/06
Type maatregel	Individuele steun
Doelstelling	Onderzoek en ontwikkeling
Vorm van de steun	Directe subsidie, terugvorderbare subsidie
Begrotingsmiddelen	Totaal van de voorziene steun: 69 932 308 EUR
Maximale steunintensiteit	50 %
Looptijd	Tot 31.12.2010
Economische sectoren	Beperkt tot de elektrische en optische industrie
Naam en adres van de steunverlenende autoriteit	Agence de l'innovation industrielle 195, Bd Saint Germain F-75007 Paris
Andere informatie	—

De tekst van de beschikking in de authentieke ta(a)l(en), waaruit de vertrouwelijke gegevens zijn geschrapt, is beschikbaar op site:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

Datum waarop het besluit is genomen	16.4.2008
Nummer van de steunmaatregel	N 457/07
Lidstaat	Italië
Regio	Marche
Benaming van de steunregeling en/of naam van de begunstigde	Promozione della ricerca industriale e dello sviluppo sperimentale in filiere tecnologico-produttive — Marche
Rechtsgrondslag	Bando per la promozione della ricerca industriale e dello sviluppo sperimentale in filiere tecnologico-produttive
Type maatregel	Steunregeling
Doelstelling	Onderzoek en ontwikkeling
Vorm van de steun	Directe subsidie
Begrotingsmiddelen	Totaal van de voorziene steun: 30 mln EUR
Maximale steunintensiteit	80 %
Looptijd	Tot 31.12.2013
Economische sectoren	Alle sectoren
Naam en adres van de steunverlenende autoriteit	Regione Marche Via Tiziano, 44 I-60100 Ancona
Andere informatie	Dit besluit treedt in de plaats van dat van 21 januari 2008

De tekst van de beschikking in de authentieke ta(a)l(en), waaruit de vertrouwelijke gegevens zijn geschrapt, is beschikbaar op site:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

Datum waarop het besluit is genomen	2.4.2008
Nummer van de steunmaatregel	N 575/07
Lidstaat	Polen
Regio	—
Benaming (en/of naam van de begunstigde)	Pomoc państwa dla polskiego górnictwa w latach 2008–2010
Rechtsgrondslag	Ustawa z 7 września 2007 r. o funkcjonowaniu górnictwa węgla kamiennego w latach 2008–2015
Type maatregel	Steunregeling
Doelstelling	Steun ter dekking van buitengewone kosten

Vorm	Subsidies, vrijstelling van bijdragen voor PFRON en heffingen en boetes te betalen aan NFOŚiGW, uitstel van aansprakelijkheidsvergoedingen aan ZUS
Begrotingsmiddelen	1 305 598 500 PLN
Steunintensiteit	—
Looptijd	2008-2010
Betrokken economische sectoren	Kolenindustrie
Naam en adres van de autoriteit die de steun verleent	Minister Gospodarki (MG) Plac Trzech Krzyży 3/5 PL-00-507 Warszawa  Zakład Ubezpieczeń Społecznych (ZUS) ul. Czerniakowska 16 PL-00-701 Warszawa  Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej (NFOŚiGW) ul. Konstruktorska 3a PL-02-673 Warszawa  Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych (PFRON) Al. Jana Pawła II 13 PL-00-828 Warszawa
Andere informatie	—

De tekst van de beschikking in de authentieke ta(a)l(en), waaruit de vertrouwelijke gegevens zijn geschrapt, is beschikbaar op site:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

Datum waarop het besluit is genomen	16.4.2008
Nummer van de steunmaatregel	NN 17/08 (ex N 301/07)
Lidstaat	Italië
Regio	Campania
Benaming van de steunregeling en/of naam van de begunstigde	Aiuto a favore di Digital Display Devices (MSF 2002)
Rechtsgrondslag	Legge n. 488 del 19 dicembre 1992 «Disciplina intervento aree depresse territorio nazionale» Legge n. 662 del 23 dicembre 1996, art. 2, commi 203 e segg. «Disciplina della programmazione negoziata/contratti di programma» DPR n. 175 del 26 marzo 2001 Art. 60 legge finanziaria 2003 «Creazione fondo aree sottosviluppate» DM Attività produttive del 12 novembre 2003 modalità di accesso dei contratti di localizzazione/programma DM Sviluppo economico del 27 dicembre 2006
Type maatregel	Individuele steun
Doelstelling	Regionale ontwikkeling
Vorm van de steun	Directe subsidie

Begrotingsmiddelen	Totaal van de voorziene steun: 179,8 mln EUR
Maximale steunintensiteit	12,08 %
Looptijd	27.12.2006-31.12.2009
Economische sectoren	Beperkt tot de elektrische en optische industrie
Naam en adres van de steunverlenende autoriteit	Ministero dello Sviluppo economico Via Molise, 2 I-00187 Roma
Andere informatie	—

De tekst van de beschikking in de authentieke ta(a)l(en), waaruit de vertrouwelijke gegevens zijn geschrapt, is beschikbaar op site:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

Datum waarop het besluit is genomen	26.3.2008
Nummer van de steunmaatregel	N 106/08
Lidstaat	Bondsrepubliek Duitsland
Regio	—
Benaming (en/of naam van de begunstigde)	Richtlinie zur Förderung der Anschaffung emissionsarmer schwerer Nutzfahrzeuge
Rechtsgrondslag	Haushaltsgesetz
Type maatregel	Steunregeling
Doelstelling	Bevordering van meer milieuvriendelijke vrachtwagens
Vorm	Investeringssteun of interestvergoeding
Begrotingsmiddelen	Maximaal 120 mln EUR per jaar
Steunintensiteit	Maximale steunintensiteit: 50 % van de in aanmerking komende kosten (extra investeringskosten)
Looptijd	1.1.2007-31.12.2013
Betrokken economische sectoren	Vervoersector
Naam en adres van de autoriteit die de steun verleent	Bundesministerium für Verkehr, Bau und Wohnungswesen Invalidenstraße 4 D-10115 Berlin
Andere informatie	—

De tekst van de beschikking in de authentieke ta(a)l(en), waaruit de vertrouwelijke gegevens zijn geschrapt, is beschikbaar op site:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

**Besluit om geen bezwaar aan te tekenen tegen een aangemelde concentratie****(Zaak COMP/M.5143 — Barclays/CID)****(Voor de EER relevante tekst)**

(2008/C 137/02)

Op 15 mei 2008 heeft de Commissie besloten geen bezwaar aan te tekenen tegen bovenvermelde aangemelde concentratie en deze verenigbaar met de gemeenschappelijke markt te verklaren. Deze beschikking is gebaseerd op artikel 6, lid 1, onder b), van Verordening (EG) nr. 139/2004 van de Raad. De volledige tekst van de beschikking is slechts beschikbaar in het Engels en zal openbaar worden gemaakt na verwijdering van eventuele bedrijfsgeheimen. De tekst is beschikbaar:

- op de website „concurrentie” van de Europese Commissie (<http://ec.europa.eu/comm/competition/mergers/cases/>). Deze website biedt verschillende mogelijkheden om individuele concentratiebeschikkingen op te zoeken, onder meer op bedrijfsnaam, nummer van de zaak, datum en sector;
- in elektronische vorm op de EUR-Lex website onder documentnummer 32008M5143. EUR-Lex is het geïnformatiseerde documentatiesysteem voor de communautaire wetgeving (<http://eur-lex.europa.eu>).

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**Besluit om geen bezwaar aan te tekenen tegen een aangemelde concentratie****(Zaak COMP/M.5131 — Rewe/Fegro-Selgros)****(Voor de EER relevante tekst)**

(2008/C 137/03)

Op 16 mei 2008 heeft de Commissie besloten geen bezwaar aan te tekenen tegen bovenvermelde aangemelde concentratie en deze verenigbaar met de gemeenschappelijke markt te verklaren. Deze beschikking is gebaseerd op artikel 6, lid 1, onder b), van Verordening (EG) nr. 139/2004 van de Raad. De volledige tekst van de beschikking is slechts beschikbaar in het Duits en zal openbaar worden gemaakt na verwijdering van eventuele bedrijfsgeheimen. De tekst is beschikbaar:

- op de website „concurrentie” van de Europese Commissie (<http://ec.europa.eu/comm/competition/mergers/cases/>). Deze website biedt verschillende mogelijkheden om individuele concentratiebeschikkingen op te zoeken, onder meer op bedrijfsnaam, nummer van de zaak, datum en sector;
  - in elektronische vorm op de EUR-Lex website onder documentnummer 32008M5131. EUR-Lex is het geïnformatiseerde documentatiesysteem voor de communautaire wetgeving (<http://eur-lex.europa.eu>).
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**Besluit om geen bezwaar aan te tekenen tegen een aangemelde concentratie**  
**(Zaak COMP/M.4786 — Deutsche Bahn/Transfesa)**

(Voor de EER relevante tekst)

(2008/C 137/04)

Op 18 maart 2008 heeft de Commissie besloten geen bezwaar aan te tekenen tegen bovenvermelde aangemelde concentratie en deze verenigbaar met de gemeenschappelijke markt te verklaren. Deze beschikking is gebaseerd op artikel 6, lid 1, onder b), van Verordening (EG) nr. 139/2004 van de Raad. De volledige tekst van de beschikking is slechts beschikbaar in het Engels en zal openbaar worden gemaakt na verwijdering van eventuele bedrijfsgeheimen. De tekst is beschikbaar:

- op de website „concurrentie” van de Europese Commissie (<http://ec.europa.eu/comm/competition/mergers/cases/>). Deze website biedt verschillende mogelijkheden om individuele concentratiebeschikkingen op te zoeken, onder meer op bedrijfsnaam, nummer van de zaak, datum en sector;
- in elektronische vorm op de EUR-Lex website onder documentnummer 32008M4786. EUR-Lex is het geïnformatiseerde documentatiesysteem voor de communautaire wetgeving (<http://eur-lex.europa.eu>).

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**Besluit om geen bezwaar aan te tekenen tegen een aangemelde concentratie**  
**(Zaak COMP/M.5008 — Vivendi/Activision)**

(Voor de EER relevante tekst)

(2008/C 137/05)

Op 16 april 2008 heeft de Commissie besloten geen bezwaar aan te tekenen tegen bovenvermelde aangemelde concentratie en deze verenigbaar met de gemeenschappelijke markt te verklaren. Deze beschikking is gebaseerd op artikel 6, lid 1, onder b), van Verordening (EG) nr. 139/2004 van de Raad. De volledige tekst van de beschikking is slechts beschikbaar in het Engels en zal openbaar worden gemaakt na verwijdering van eventuele bedrijfsgeheimen. De tekst is beschikbaar:

- op de website „concurrentie” van de Europese Commissie (<http://ec.europa.eu/comm/competition/mergers/cases/>). Deze website biedt verschillende mogelijkheden om individuele concentratiebeschikkingen op te zoeken, onder meer op bedrijfsnaam, nummer van de zaak, datum en sector;
  - in elektronische vorm op de EUR-Lex website onder documentnummer 32008M5008. EUR-Lex is het geïnformatiseerde documentatiesysteem voor de communautaire wetgeving (<http://eur-lex.europa.eu>).
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## IV

(Informatie)

INFORMATIE AFKOMSTIG VAN DE INSTELLINGEN EN  
ORGANEN VAN DE EUROPESE UNIE

## COMMISSIE

**Door de Europese Centrale Bank toegepaste rentevoet voor de basisherfinancieringstransacties <sup>(1)</sup>:**  
**4,19 % per 1 juni 2008**

**Wisselkoersen van de euro <sup>(2)</sup>**  
**3 juni 2008**

(2008/C 137/06)

**1 euro =**

Munteenheid		Koers	Munteenheid		Koers
USD	US-dollar	1,5593	TRY	Turkse lira	1,9132
JPY	Japanse yen	163	AUD	Australische dollar	1,6272
DKK	Deense kroon	7,4583	CAD	Canadese dollar	1,562
GBP	Pond sterling	0,79105	HKD	Hongkongse dollar	12,1702
SEK	Zweedse kroon	9,3408	NZD	Nieuw-Zeelandse dollar	1,9822
CHF	Zwitserse frank	1,611	SGD	Singaporese dollar	2,1202
ISK	IJslandse kroon	118,79	KRW	Zuid-Koreaanse won	1 587,29
NOK	Noorse kroon	7,9615	ZAR	Zuid-Afrikaanse rand	12,0315
BGN	Bulgaarse lev	1,9558	CNY	Chinese yuan renminbi	10,7982
CZK	Tsjechische koruna	24,84	HRK	Kroatische kuna	7,252
EEK	Estlandse kroon	15,6466	IDR	Indonesische roepia	14 517,08
HUF	Hongaarse forint	241,48	MYR	Maleisische ringgit	5,0256
LTL	Litouwse litas	3,4528	PHP	Filipijnse peso	68,212
LVL	Letlandse lat	0,7031	RUB	Russische roebel	36,902
PLN	Poolse zloty	3,365	THB	Thaise baht	50,841
RON	Roemeense leu	3,62	BRL	Braziliaanse real	2,5267
SKK	Slowaakse koruna	30,36	MXN	Mexicaanse peso	16,0686

<sup>(1)</sup> Rentevoet die is toegepast op de laatst uitgevoerde transactie voor de opgegeven dag. In geval van een tender met variabele rente, verwijst deze rentevoet naar de marginale interestvoet.

<sup>(2)</sup> Bron: door de Europese Centrale Bank gepubliceerde referentiekosten.

**Mededeling van de Commissie — Kennisgeving van opleidingstitels van medische specialisten, verantwoordelijk algemeen ziekenverplegers, specialisten in de tandheelkunde, verloskundigen en architecten**

(Voor de EER relevante tekst)

(2008/C 137/07)

Richtlijn 2005/36/EG van het Europees Parlement en de Raad van 7 september 2005 betreffende de erkenning van beroepskwalificaties, zoals gewijzigd bij Richtlijn 2006/100/EG van de Raad van 20 november 2006 tot aanpassing van een aantal richtlijnen op het gebied van het vrije verkeer van personen, in verband met de toetreding van de Republiek Bulgarije en Roemenië, en in het bijzonder artikel 21, lid 7, schrijft voor dat de lidstaten de Commissie in kennis stellen van de wettelijke en bestuursrechtelijke bepalingen die zij met betrekking tot de afgifte van opleidingstitels op de door hoofdstuk III van deze richtlijn bestreken gebieden vaststellen. De Commissie doet hiervan passende mededeling in het *Publicatieblad van de Europese Unie* en vermeldt daarbij de door de lidstaten goedgekeurde benamingen voor de opleidingstitels alsmede, in voorkomend geval, de instelling die de opleidingstitel afgeeft, het certificaat dat deze titel vergezelt en de overeenkomstige beroepstitel, zoals opgenomen in bijlage V, respectievelijk punten 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 en 5.7.1.

Aangezien verscheidene lidstaten kennis hebben gegeven van nieuwe titels of veranderingen in de titels van bijlage V, publiceert de Commissie deze mededeling overeenkomstig artikel 21, lid 7, van Richtlijn 2005/36/EG <sup>(1)</sup>.

### 1. Medische specialisten

Nederland heeft kennis gegeven van de volgende veranderingen in de titels van reeds in bijlage V, punt 5.1.3, van Richtlijn 2005/36/EG opgenomen benamingen van medische specialisten:

a) onder „Verloskunde en gynaecologie”:

*Obstetrie en Gynaecologie*

b) onder „Maag- en darmziekten”:

*Maag-darm-leverziekten*

c) onder „klinische chemie”:

*Klinische Chemie (tot 4 april 2000)*

d) onder „Allergologie”:

*Allergologie (tot 12 augustus 1996).*

### 2. Verantwoordelijk algemeen ziekenverplegers

Polen heeft kennis gegeven van de volgende aanvullende titel van verantwoordelijk algemeen ziekenverpleger (bijlage V, punt 5.2.2, bij Richtlijn 2005/36/EG):

Land	Opleidingstitel	Uitreikende instelling	Beroepstitel	Referentiedatum
Polska	Dyplom ukończenia studiów wyższych zawodowych na kierunku/specjalności pielęgniarstwo z tytułem „licencjat pielęgniarstwa”	Instytucja prowadząca kształcenie na poziomie wyższym uznana przez właściwe władze	Pielęgniarka	1.5.2004

### 3. Specialisten in de tandheelkunde

1. Portugal heeft kennis gegeven van de volgende titels van specialisten in de tandheelkunde in orthodontie en kaakchirurgie (bijlage V, punt 5.3.3, bij Richtlijn 2005/36/EG):

a) voor „Orthodontie”:

Land	Opleidingstitel	Uitreikende instelling	Referentiedatum
Portugal	Título de Especialista em Ortodontia	Ordem dos Médicos Dentistas (OMD)	4.6.2008

<sup>(1)</sup> Een geconsolideerde versie van bijlage V bij Richtlijn 2005/36/EG is te vinden op: [http://ec.europa.eu/internal\\_market/qualifications/](http://ec.europa.eu/internal_market/qualifications/)

b) voor „Kaakchirurgie”:

Land	Opleidingstitel	Uitreikende instelling	Referentiedatum
Portugal	Título de Especialista em Cirurgia Oral	Ordem dos Médicos Dentistas (OMD)	4.6.2008

2. Zweden heeft kennis gegeven van de volgende veranderingen in de titels van reeds in bijlage V, punt 5.3.3, van Richtlijn 2005/36/EG opgenomen titels van specialisten in de tandheelkunde:

a) voor „Orthodontie”:

Land	Opleidingstitel	Uitreikende instelling	Referentiedatum
Sverige	Bevis om specialistkompetens i ortodonti	Socialstyrelsen	1.1.1994

b) voor „Kaakchirurgie”:

Land	Opleidingstitel	Uitreikende instelling	Referentiedatum
Sverige	Bevis om specialistkompetens i oral kirurgi	Socialstyrelsen	1.1.1994

#### 4. Verloskundigen

Polen heeft kennis gegeven van de volgende aanvullende titel van verloskundige (bijlage V, punt 5.5.2, bij Richtlijn 2005/36/EG):

Land	Opleidingstitel	Uitreikende instelling	Beroepstitel	Referentiedatum
Polska	Dyplom ukończenia studiów wyższych zawodowych na kierunku/specjalności położnictwa z tytułem „licencjat położnictwa”	Instytucja prowadząca kształcenie na poziomie wyższym uznana przez właściwe władze	Położna	1.5.2004

#### 5. Architecten

1. Italië heeft kennis gegeven van de volgende aanvullende titels op het gebied van architectuur (bijlage V, punt 5.7.1, bij Richtlijn 2005/36/EG):

Land	Opleidingstitel	Uitreikende instelling	Certificaat bij de opleidingstitel	Referentie-academiejaar
Italia	Laurea specialistica in ingegneria edile — architettura	Università degli Studi di Salerno	Diploma di abilitazione all'esercizio indipendente della professione che viene rilasciato dal ministero dell'Istruzione, dell'università e della ricerca dopo che il candidato ha sostenuto con esito positivo l'esame di Stato davanti ad una commissione competente	2005/2006
		Università degli Studi della Calabria		2003/2004
		Università degli Studi di Brescia		2001/2002
	Laurea specialistica in architettura	Facoltà di architettura dell'Università degli Studi «G. D'Annunzio» di Chieti-Pescara		2001/2002
		Facoltà di architettura, pianificazione e ambiente del Politecnico di Milano		2001/2002
	Laurea specialistica in architettura (Restauro)	Università IUAV di Venezia		2002/2003
		Facoltà di architettura di «Valle Giulia» dell'Università degli Studi «La Sapienza» di Roma		2004/2005
Laurea specialistica in architettura — progettazione architettonica e urbana	Università degli Studi di Roma Tre — Facoltà di Architettura	2001/2002		
Laurea specialistica in architettura — progettazione architettonica e urbana	Facoltà «Ludovico Quaroni» dell'Università degli Studi «La Sapienza» di Roma	2000/2001		
	Facoltà di architettura dell'Università degli Studi di Trieste	2001/2002		

2. Slovenië heeft kennis gegeven van de volgende aanvullende titel op het gebied van architectuur (bijlage V, punt 5.7.1, bij Richtlijn 2005/36/EG):

Land	Opleidingstitel	Uitreikende instelling	Certificaat bij de opleidingstitel	Referentie-academiejaar
Slovenija	Magister inženir arhitekture/Magistrica inženirka arhitekture	Univerza v Ljubljani, Fakulteta za Arhitekturo		2007/2008

3. De Tsjechische Republiek heeft kennis gegeven van de volgende aanvullende titel op het gebied van architectuur (bijlage V, punt 5.7.1, bij Richtlijn 2005/36/EG):

Land	Opleidingstitel	Uitreikende instelling	Certificaat bij de opleidingstitel	Referentie-academiejaar
Česká republika	Architektura a urbanismus	Fakulta architektury, České vysoké učení technické (ČVUT) v Praze		2007/2008

## V

(Bekendmakingen)

## BESTUURLIJKE PROCEDURES

## EUROPEES BUREAU VOOR PERSONEELSSELECTIE (EPSO)

**AANKONDIGING VAN ALGEMENE VERGELIJKENDE ONDERZOEKEN EPSO/AST/58-63/08**

(2008/C 137/08)

Het Europees Bureau voor Personeelsselectie (EPSO) organiseert de volgende algemene vergelijkende onderzoeken:

- EPSO/AST/58/08 — Werktuigkunde
- EPSO/AST/59/08 — Laboratoriumtechniek
- EPSO/AST/60/08 — Civiele techniek en elektriciteit

voor de aanwerving van laboratoriumassistenten (AST1) op het gebied van onderzoek en kernenergie, met name voor technische ondersteuning en laboratoriumwerkzaamheden

en

- EPSO/AST/61/08 — Laboratorium- en infrastructuurtechnici
- EPSO/AST/62/08 — Kerntechnici
- EPSO/AST/63/08 — Nucleaire inspecteurs

voor de aanwerving van assistenten (AST3) op het gebied van kernenergie.

De aankondiging van het vergelijkend onderzoek wordt alleen in het Duits, Engels en Frans bekendgemaakt in Publicatieblad C 137 A van 4 juni 2008.

Aanvullende informatie is beschikbaar op de website van EPSO: <http://europa.eu/epso>

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PROCEDURES IN VERBAND MET DE UITVOERING VAN HET  
GEMEENSCHAPPELIJK MEDEDINGINGSBELEID

COMMISSIE

STEUNMAATREGELEN VAN DE STATEN — ITALIË

Steunmaatregel C 19/08 (ex NN 13/08) — Misbruik van reddingssteun ten behoeve van Sandretto

Uitnodiging, overeenkomstig artikel 88, lid 2, van het EG-Verdrag, om opmerkingen te maken

(Voor de EER relevante tekst)

(2008/C 137/09)

De Commissie heeft Italië bij schrijven van 16 april 2008, dat na deze samenvatting in de authentieke taal is weergegeven, in kennis gesteld van haar besluit tot inleiding van de procedure van artikel 88, lid 2, van het EG-Verdrag ten aanzien van de bovengenoemde steunmaatregel.

Belanghebbenden kunnen hun opmerkingen over de betrokken steunmaatregel ten aanzien waarvan de Commissie de procedure inleidt, kenbaar maken door deze binnen één maand vanaf de datum van deze bekendmaking te zenden aan:

Europese Commissie  
Directoraat-generaal Concurrentie  
Griffie Staatssteun  
B-1049 Brussel  
Fax (32-2) 296 12 42

Deze opmerkingen zullen ter kennis van Italië worden gebracht. Een belanghebbende die opmerkingen maakt, kan, met opgave van redenen, schriftelijk verzoeken om vertrouwelijke behandeling van zijn identiteit.

TEKST VAN DE SAMENVATTING

PROCEDURE

Op 29 januari 2007 heeft de Commissie reddingssteun van 5 mln EUR ten behoeve van Sandretto Industrie S.r.l. (hierna: „Sandretto”) goedgekeurd. Aangezien zij geen informatie over de voortgang had ontvangen, heeft de Commissie op 14 december 2007 een brief aan Italië gezonden waarin zij verzocht haar hierover te informeren. Italië deelde de Commissie bij brief van 21 januari 2008 mee dat de steun in twee delen — op 24 juli 2007 en op 13 augustus 2007 — was verleend. Op 23 januari 2008 verzocht de Commissie Italië te bevestigen dat de garantie op 24 januari 2008 afloopt of een herstructureringsplan voor te leggen. Italië deelde de Commissie op 8 februari 2008 mee dat het eerste deel van de garantie op 24 januari 2008 was afgelopen en dat de onderneming failliet was gegaan.

BESCHRIJVING

Sandretto is een fabrikant van persapparatuur voor het inspuiten van kunststoffen, die in de provincie Turijn is gevestigd en 350 werknemers heeft. De onderneming bevindt zich sedert 2005 in moeilijkheden. De door de Commissie goedgekeurde reddingssteun werd in de vorm van twee kredietlijnen van elk

2,5 mln EUR verleend. De steun werd bijna 6 maanden na de goedkeuring ervan toegekend. Italië heeft de Commissie meegedeeld dat een poging, begin 2008, om Sandretto aan een particuliere investeerder te verkopen is mislukt.

BEOORDELING

De Commissie beschikt niet over elementen die erop wijzen dat Sandretto na het verstrijken van de periode van 6 maanden geen reddingssteun meer heeft ontvangen. Daarenboven is de Commissie van mening dat de lange tijdsspanne tussen de goedkeuring en de verlening van de steun moet worden gerechtvaardigd door de bijzondere omstandigheden van de zaak en dat zij in het onderhavige geval betwijfelt of van dit soort bijzondere omstandigheden sprake is. Aangezien bovendien Italië geen gegevens over de faillissementsprocedure van Sandretto heeft verleend, betwijfelt de Commissie of de procedure het mogelijk maakt om alle ten onrechte ontvangen steun daadwerkelijk terug te vorderen. Ten slotte acht de Commissie het, aangezien Italië geen herstructureringsplan aan haar heeft voorgelegd, in dit stadium weinig waarschijnlijk dat verlenging van de reddingssteun in de vorm van herstructureringssteun als verenigbaar met de gemeenschappelijke markt kan worden beschouwd.

## TEKST VAN DE BRIEF

„La Commissione informa l'Italia che, dopo aver esaminato le informazioni trasmesse dalle autorità italiane sull'aiuto in oggetto, ha deciso di avviare il procedimento di cui all'articolo 88, paragrafo 2, del trattato CE.

## I. PROCEDIMENTO

- (1) Il 29 gennaio 2007 la Commissione ha approvato un aiuto per il salvataggio dell'importo di 5 Mio EUR a favore di Sandretto Industrie Srl (in seguito denominata "Sandretto")<sup>(1)</sup>. L'aiuto consisteva in una garanzia su due linee di credito fornite da banche private, le cui condizioni erano da definire dopo l'approvazione della Commissione. L'Italia si era impegnata a revocare la garanzia al più tardi sei mesi dopo la sua concessione e a fornire alla Commissione un piano di ristrutturazione per Sandretto entro sei mesi dalla data di autorizzazione dell'aiuto.
- (2) In mancanza di informazioni circa gli sviluppi della situazione, la Commissione ha inviato una lettera all'Italia il 14 dicembre 2007 (D/54995) per chiedere un aggiornamento sul caso.
- (3) L'Italia ha risposto con lettera del 21 gennaio 2008 (A/1233), informando la Commissione che l'aiuto era stato versato in due tranche: la prima erogata il 24 luglio 2007 e la seconda il 13 agosto 2007.
- (4) Con lettera del 23 gennaio 2008 (D/50314) la Commissione ha chiesto all'Italia di confermare la cessazione della garanzia al 24 gennaio 2008 o in alternativa di trasmettere un piano di ristrutturazione, aggiungendo che in mancanza di una sollecita risposta i servizi della Commissione avrebbero proposto l'avvio del procedimento di indagine formale.
- (5) L'8 febbraio 2008 l'Italia ha risposto (A/2526) alla Commissione che la prima tranche della garanzia cessava il 24 gennaio 2008 e che la società era fallita.
- (7) Sandretto ha 350 dipendenti e rappresenta la principale fonte di impiego per l'economia locale. Le sue attività commerciali sono principalmente orientate al mercato europeo, con varie imprese controllate in Francia, Spagna, Regno Unito e Paesi Bassi. Sandretto è specializzata in macchinari per usi speciali in mercati di nicchia: nel 2003, quando ancora non si erano manifestate difficoltà finanziarie, era al decimo posto fra gli operatori di questo mercato in Europa.
- (8) Nel 2005 Sandretto ha realizzato un fatturato di 21,58 Mio EUR e subito perdite per 43,74 Mio EUR. Il tribunale di Torino, con decisione del 16 marzo 2006, ha ammesso la società alla procedura di amministrazione straordinaria<sup>(2)</sup>. Di conseguenza, l'azionista unico ha automaticamente perso il controllo sulla gestione dell'impresa, passata ai tre commissari straordinari nominati dal ministero competente.
- (9) Secondo le autorità italiane, la principale causa delle difficoltà della società è da imputarsi al suo rilievo da parte dell'investitore americano Taylor's International LLC che non è riuscito ad effettuare gli investimenti necessari provocando l'inattività degli stabilimenti produttivi.
- (10) Nel giugno 2007 è stato pubblicato un invito a manifestare l'interesse all'acquisto, per vendere Sandretto ad un nuovo investitore privato. Secondo quanto riferito dalle autorità italiane, questo tentativo non ha avuto buon esito e la società è andata in fallimento<sup>(3)</sup>. La Commissione non è al corrente se Sandretto abbia cessato la sua attività.

## 2.2. La misura di aiuto

- (11) Sebbene sia stato approvato il 29 gennaio 2007, l'aiuto per il salvataggio è stato erogato solo sei mesi dopo: la prima tranche il 24 luglio 2007 e la seconda il 13 agosto 2007. Secondo l'Italia questo periodo di tempo era necessario agli amministratori straordinari per scegliere le banche private che avrebbero concesso le linee di credito e per accordarsi sulle condizioni del finanziamento.
- (12) L'aiuto al salvataggio è stato concesso nella forma di una garanzia su due linee di credito di 2,5 Mio EUR ciascuna, fornite dalla Banca Popolare di Novara e Banca Intesa Sanpaolo.
- (13) Secondo l'Italia, la prima tranche dell'aiuto è terminata il 24 gennaio 2008. Tuttavia, nonostante due richieste da parte della Commissione, le autorità italiane non hanno presentato alcuna prova che la prima tranche della garanzia è terminata, né hanno fornito alcuna informazione sulla seconda tranche, o un piano di ristrutturazione (o di liquidazione) per la società.

## II. DESCRIZIONE

## 2.1. L'impresa interessata

- (6) Sandretto è un produttore di presse per iniezione per materie plastiche. L'impresa è stata fondata nel 1947 come "Fratelli Sandretto" e da allora ha cambiato più volte denominazione e forma societaria: l'ultimo di questi cambiamenti risale al 18 maggio 2005 quando l'impresa ha assunto la denominazione di Sandretto Industrie Srl. Sandretto ha due stabilimenti di produzione situati nella provincia di Torino nei comuni di Grugliasco e Pont Canavese, entrambi ammessi a beneficiare di aiuti ai sensi dell'articolo 87, paragrafo 3, lettera c), del trattato CE. Attualmente l'impresa appartiene ad un unico azionista, la società statunitense Taylor's International LLC.

<sup>(1)</sup> Caso N 802/06 (GU C 43 del 27.2.2007, pag. 2).

<sup>(2)</sup> La Commissione comprende dalla legislazione italiana che "l'amministrazione straordinaria" è una procedura concorsuale applicata alle imprese in stato di insolvenza con l'obiettivo di mantenerne l'attività produttiva.

<sup>(3)</sup> La Commissione comprende dalla legislazione italiana che la "procedura fallimentare" è una procedura concorsuale che ha l'obiettivo di soddisfare le richieste dei creditori attraverso la vendita dei beni dell'impresa, che conduce di solito alla liquidazione della società.

### III. VALUTAZIONE

#### 3.1. Esistenza di aiuto

(14) La Commissione ritiene che la misura di aiuto per il salvataggio costituisca aiuto di Stato, ai sensi dell'articolo 87, paragrafo 1, del trattato CE. La misura ha assunto la forma di una garanzia, che costituisce un beneficio finanziato da risorse pubbliche. L'aiuto è selettivo in quanto riguarda solo Sandretto ed è probabile che falsi la concorrenza poiché garantisce all'impresa un vantaggio rispetto ad altri concorrenti che non ne fruiscono. Infine, il mercato in cui Sandretto opera è caratterizzato da notevoli scambi tra Stati membri.

#### 3.2. Applicazione abusiva di aiuto per il salvataggio

(15) La Commissione ha approvato l'aiuto per il salvataggio a favore di Sandretto<sup>(4)</sup>. In seguito a questa decisione, l'aiuto per il salvataggio, se limitato a sei mesi, è compatibile col mercato comune. Per la proroga dell'aiuto per il salvataggio oltre il periodo di sei mesi è necessaria una valutazione sulla base degli Orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà [in seguito, "gli orientamenti"<sup>(5)</sup>], per verificare se costituisca un'applicazione abusiva dell'aiuto per il salvataggio o se possa essere considerata compatibile a titolo di aiuto per la ristrutturazione.

(16) In base al punto 25, lettera a) degli orientamenti, l'aiuto per il salvataggio deve cessare entro un termine non superiore a sei mesi dall'erogazione della prima tranche all'impresa. Il punto 25, lettera c), degli orientamenti sembra fissare un'altra data di inizio per il calcolo del termine dei sei mesi, stabilendo che lo Stato membro deve presentare alla Commissione, entro sei mesi dall'autorizzazione dell'aiuto per il salvataggio, un piano di ristrutturazione (o di liquidazione) o la prova che la garanzia è stata revocata. Questo ultimo punto sembra basarsi sull'ipotesi che l'aiuto per il salvataggio, per la sua natura temporanea e di urgenza, viene di solito concesso immediatamente dopo la sua autorizzazione da parte della Commissione.

(17) Tuttavia, nel presente caso, l'Italia ha concesso l'aiuto per il salvataggio quasi sei mesi dopo la sua approvazione da parte della Commissione e pertanto, in base alla semplice enunciazione degli orientamenti, la data di inizio del termine di sei mesi può risultare non evidente. Poiché la Commissione ritiene che eventuali distorsioni della concorrenza possono verificarsi a partire dal momento in cui l'aiuto è effettivamente erogato, la data che dà avvio al termine di sei mesi coincide con la concessione all'impresa della prima rata che è assistita dalla garanzia.

(18) Di conseguenza, il termine per la cessazione della garanzia o per la presentazione di un piano di ristrutturazione scade, conformemente al punto 25, lettera a), degli orientamenti, sei mesi dopo la concessione della prima tranche, ossia il 24 gennaio 2008.

(19) Al momento della notifica dell'aiuto per il salvataggio, l'Italia si era impegnata a revocare la garanzia al più tardi sei mesi dopo la sua concessione e a fornire alla Commis-

sione un piano di ristrutturazione per Sandretto entro sei mesi dall'autorizzazione dell'aiuto.

(20) Tuttavia, nonostante le richieste della Commissione, le autorità italiane non hanno presentato alcun piano di ristrutturazione (o di liquidazione), né fornito la prova della cessazione della garanzia a seguito del rimborso della prima rata del prestito. Ad eccezione di una breve lettera in cui affermavano che la data di cessazione per la prima tranche dell'aiuto era il 24 gennaio 2008 (data presunta del rimborso della prima rata del prestito), le autorità italiane non hanno presentato sinora alcuna prova dell'effettiva cessazione della garanzia né dell'effettivo rimborso della prima rata del prestito. Riguardo alla seconda tranche, l'Italia non ha fornito alcun tipo di informazione relativa alla cessazione della garanzia e/o al rimborso del prestito.

(21) Pertanto la Commissione non dispone di elementi attestanti che la società abbia cessato di beneficiare dell'aiuto per il salvataggio dopo il termine dei sei mesi.

(22) Inoltre, fra l'autorizzazione e la concessione dell'aiuto per il salvataggio è intercorso un lasso di tempo considerevole: questo ritardo di quasi sei mesi suscita dubbi riguardo alla necessità dell'aiuto. Conformemente al punto 15 degli orientamenti, l'aiuto per il salvataggio è uno strumento previsto per sostenere un'impresa che affronta un'acuta crisi di liquidità allo scopo di consentire di mantenerla in attività per il tempo necessario a elaborare un piano di ristrutturazione. L'aiuto per il salvataggio è quindi caratterizzato dalla rapidità e dalla temporaneità e la decisione di approvazione della Commissione non ne autorizza la sua corresponsione ad una data di gran lunga posteriore, quando le circostanze originarie che ne avevano giustificato l'approvazione potrebbero non sussistere più.

(23) Le autorità italiane sostengono che il periodo di tempo intercorso era necessario per concordare con le banche le condizioni del finanziamento e affermano che la società era ancora in serie difficoltà sei mesi dopo l'autorizzazione. La Commissione ritiene che un lasso di tempo di tale durata fra l'autorizzazione e la concessione dell'aiuto debba essere giustificato da speciali circostanze e nutre dubbi circa la loro presenza nel caso di specie.

(24) Inoltre, l'Italia non ha trasmesso informazioni circa la procedura fallimentare applicata a Sandretto: in particolare se l'iscrizione degli importi dovuti allo Stato ne assicuri il totale ed immediato recupero e se e quando l'attività della società dovesse cessare. Pertanto la Commissione non è certa che la procedura fallimentare assicuri l'effettivo recupero degli importi di aiuto erogati abusivamente.

#### 3.3. Compatibilità con il mercato comune a titolo di aiuto per la ristrutturazione

(25) La Commissione deve valutare se esistano altri motivi per dichiarare la compatibilità con il mercato comune dell'aiuto per il salvataggio illegalmente prorogato. Conformemente al punto 20 degli orientamenti, gli aiuti a favore delle imprese in difficoltà possono essere unicamente considerati compatibili in base agli

<sup>(4)</sup> Caso N 802/06 (GU C 43 del 27.2.2007, pag. 2).

<sup>(5)</sup> GU C 244 dell'1.10.2004, pag. 2.



orientamenti stessi. La proroga dell'aiuto per il salvataggio può costituire un aiuto per la ristrutturazione compatibile qualora soddisfisi le condizioni per l'autorizzazione stabilite ai punti 32-51 degli orientamenti. In particolare, l'autorizzazione di un aiuto per la ristrutturazione è subordinata all'attuazione di un piano di ristrutturazione realizzabile, credibile e solido da presentare alla Commissione per approvazione.

- (26) Poiché l'Italia non ha presentato tale piano di ristrutturazione, la Commissione in questa fase ritiene improbabile che la proroga dell'aiuto per il salvataggio possa essere considerata compatibile a titolo di aiuto per la ristrutturazione.

#### IV. CONCLUSIONE

- (27) La Commissione non dispone di elementi attestanti che la società abbia cessato di beneficiare dell'aiuto per il salvataggio dopo il termine dei sei mesi.
- (28) La Commissione ritiene peraltro che il considerevole lasso di tempo intercorso fra l'autorizzazione e la concessione dell'aiuto susciti dubbi riguardanti la necessità dell'aiuto e debba perciò essere giustificato da circostanze speciali del caso. In questa fase la Commissione dubita che sussistano siffatte circostanze speciali.
- (29) Inoltre, poiché le autorità italiane non hanno comunicato alcuna informazione sulla procedura fallimentare applicata a Sandretto, la Commissione dubita che la procedura fallimentare assicuri l'effettivo recupero degli importi di aiuto erogati abusivamente.
- (30) Infine, poiché l'Italia non ha presentato alcun piano di ristrutturazione, la Commissione in questa fase ritiene improbabile che la proroga dell'aiuto per il salvataggio possa essere considerata compatibile a titolo di aiuto per la ristrutturazione.

#### V. DECISIONE

- (31) La Commissione in questa fase ritiene probabile che la proroga oltre il termine di sei mesi dell'aiuto per il salvataggio approvato a favore di Sandretto Industrie Srl sia illegale e nutre dubbi circa la compatibilità della misura con il mercato comune. La Commissione decide pertanto di avviare il procedimento di indagine formale ai sensi dell'articolo 88, paragrafo 2, del trattato CE e del

regolamento (CE) n. 659/1999 del Consiglio <sup>(6)</sup>. Ciò premesso, la Commissione, nell'ambito del procedimento di cui all'articolo 88, paragrafo 2, del trattato della CE, invita l'Italia a inviarle eventuali osservazioni e a fornirle qualsiasi informazione che possa essere utile ai fini della valutazione dell'aiuto entro il termine di un mese dalla data di ricezione della presente, in particolare le informazioni richieste dall'ingiunzione di fornire informazioni di cui al punto seguente.

- (32) La Commissione, dato che le autorità italiane, nonostante un sollecito, hanno fornito risposte incomplete alla sua precedente richiesta di informazioni, ingiunge all'Italia ai sensi dell'articolo 10, paragrafo 3, del regolamento (CE) n. 659/1999 di:

- presentare la prova della cessazione della prima tranche della garanzia a seguito del rimborso del prestito,
- fornire informazioni dettagliate sulla seconda tranche della garanzia, in particolare se sia stata utilizzata,
- fornire informazioni dettagliate circa lo stato di avanzamento della procedura fallimentare applicata a Sandretto, in particolare se l'iscrizione degli importi dovuti allo Stato nell'ambito della procedura ne assicuri il pieno e immediato recupero,
- comunicare se l'impresa Sandretto continui a svolgere la sua attività,
- presentare un piano di liquidazione, ammesso che esista.

La Commissione invita inoltre le autorità italiane a trasmettere senza indugio copia della presente lettera a Sandretto.

La Commissione richiama all'attenzione del governo italiano che l'articolo 88, paragrafo 3, del trattato CE ha effetto sospensivo e che in forza dell'articolo 14 del regolamento (CE) n. 659/1999, essa può imporre allo Stato membro di recuperare presso il beneficiario un aiuto illegalmente concesso.

La Commissione comunica all'Italia che informerà gli interessati attraverso la pubblicazione della presente lettera e di una sintesi della stessa nella *Gazzetta ufficiale dell'Unione europea*. L'autorità di sorveglianza EFTA sarà del pari informata tramite invio di copia della presente lettera. Le parti interessate saranno invitate a presentare osservazioni entro un mese dalla data di tale pubblicazione."

<sup>(6)</sup> GUL 83 del 27.3.1999, pag. 5.

**STEUNMAATREGELEN VAN DE STATEN — VERENIGD KONINKRIJK****Steunmaatregel C 13/08 (ex N 598/07) — Steun ten gunste van Channel 4 in verband met de omschakeling naar digitale omroep****Uitnodiging overeenkomstig artikel 88, lid 2, van het EG-Verdrag opmerkingen te maken**

(Voor de EER relevante tekst)

(2008/C 137/10)

De Commissie heeft het Verenigd Koninkrijk bij schrijven van 2 april 2008, dat na deze samenvatting in de authentieke taal is weergegeven, in kennis gesteld van haar besluit tot inleiding van de procedure van artikel 88, lid 2, van het EG-Verdrag ten aanzien van de beoogde financiële steun ten gunste van Channel 4 om deze onderneming in staat te stellen de kosten te dragen van de omschakeling naar digitale omroep.

Belanghebbenden kunnen hun opmerkingen over de steunmaatregel ten aanzien waarvan de Commissie de procedure inleidt, kenbaar maken door deze binnen één maand vanaf de datum van deze bekendmaking te zenden aan:

Europese Commissie  
Directoraat-generaal Concurrentie  
Griffie Staatssteun  
SPA 3 6/5  
B-1049 Brussel  
Fax (32-2) 296 12 42

Deze opmerkingen zullen ter kennis van het Verenigd Koninkrijk worden gebracht. Een belanghebbende die opmerkingen maakt, kan, met opgave van redenen, schriftelijk verzoeken om vertrouwelijke behandeling van zijn identiteit.

## TEKST VAN DE SAMENVATTING

**PROCEDURE**

De maatregelen ten aanzien waarvan de Commissie de procedure van artikel 88, lid 2, heeft ingeleid, werden in eerste instantie onder de aandacht van de Commissie gebracht doordat er een klacht was ingediend en later vanwege de formele aanmelding van de steun door de autoriteiten van het Verenigd Koninkrijk.

**BESCHRIJVING VAN DE MAATREGEL**

De aangemelde maatregel heeft betrekking op de aangemelde steun van 14 mln GBP van de autoriteiten van het Verenigd Koninkrijk aan Channel 4 om deze onderneming te helpen de financiële kosten van de omschakeling naar digitale omroep te dragen.

Channel 4 is een omroep met de rechtsvorm van een openbare onderneming zonder aandeelhouders, die met een openbare-dienstverleningstaak is belast. Het is het belangrijkste kanaal van Channel 4 Corporation (C4C) en wordt geheel op commerciële basis gerund (reclame is de belangrijkste bron van inkomsten). In 2006 heeft de Commissie een klacht ontvangen van een commerciële omroep in het Verenigd Koninkrijk, die bezwaar aantekende tegen iedere mogelijke vorm van financiële steun ten gunste van Channel 4, met als argument dat C4C over voldoende en ruime kasreserves beschikt om de kosten van de omschakeling naar digitale omroep zelf te dragen zonder dat openbare steun noodzakelijk is.

De beslissing van de autoriteiten van het Verenigd Koninkrijk om steun te verlenen ten gunste van Channel 4 volgt op een diepgaande financiële doorlichting van Channel 4 door Ofcom in 2007 en een rapport dat voor Ofcom is uitgevoerd door een consultant (LEK).

De autoriteiten van het Verenigd Koninkrijk zijn het eens met de beoordeling dat de aangemelde maatregel staatssteun is in de zin van artikel 87, lid 1, van het Verdrag. Zij voeren echter aan dat de maatregel verenigbaar is met het Verdrag op grond van artikel 86, lid 2, gelet op de mededeling van de Commissie betreffende de toepassing van de regels inzake staatssteun op openbare omroepen<sup>(1)</sup> (hierna „de omroepmededeling” genoemd) en de drie specifieke verenigbaarheidscriteria, namelijk *de omschrijving van de opdracht, de toewijzing ervan en de evenredigheid van de steun*.

De indiener van de klacht contesteert de behoefte aan financiële steun van Channel 4. Hij voert aan dat Channel 4 over aanzienlijke financiële reserves en voldoende kasgeld beschikt om de kosten van de omschakeling naar digitale omroep te bekostigen. Volgens de indiener van de klacht is Channel 4 in de toekomst mogelijk minder winstgevend, maar zal het vermogen van de onderneming om zich te kwijten van haar openbare-dienstverleningstaak daar niet onder lijden en is de steun derhalve volgens hem niet noodzakelijk.

**Beoordeling van de maatregel**

Volgens de omroepmededeling moet de Commissie, in het geval van staatssteun voor openbare omroepen, voor het beantwoorden van de vraag of er sprake is van overcompensatie eerst de brutokosten van de openbare-dienstverleningstaak vaststellen en daarop de inkomsten als gevolg van de commerciële exploitatie van de openbare dienst in mindering brengen (bijvoorbeeld de inkomsten uit reclame) om de nettokosten van de openbare dienst te verkrijgen. Verder moet de Commissie zich ervan verzekeren dat de betrokken omroeporganisatie zich niet schuldig maakt aan onnodige verstoringen van de concurrentie

<sup>(1)</sup> PB C 320 van 15.11.2001, blz. 5.

met betrekking tot de commerciële activiteiten die verband houden met de openbare dienst. Indien er nettokosten zijn, moet de omroeporganisatie eventueel staatssteun kunnen krijgen.

De Commissie kan op grond van de tot dusver door het Verenigd Koninkrijk verstrekte informatie niet beoordelen of Channel 4, vanwege verplichtingen als gevolg van de omschakeling naar digitale omroep, nettokosten heeft met betrekking tot de openbare dienstverlening waardoor de onderneming in aanmerking komt voor staatssteun.

#### TEKST VAN DE BRIEF

„(1) The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

#### I. PROCEDURE

- (2) On 2 August 2006, the Commission received a complaint (CP 186/06) by a UK-based television broadcaster against a possible funding support that the UK authorities were about to grant to Channel 4 to help it meet the costs of the digital switchover.
- (3) On 10 October 2007, the UK authorities notified to the Commission their decision to grant an aid of GBP 14 million to Channel 4 to assist it to meet the capital costs of digital switchover. In the notification the UK authorities acknowledged that the notified measure constitutes an aid within the meaning of Article 87(1), and invited the Commission “to find that this aid is compatible with the EC Treaty by virtue of Article 86(2) EC, having regard (in particular) to the Commission’s Communication <sup>(2)</sup> on the application of the State aid rules in relation to public service broadcasting (“the Communication”)”.
- (4) On 23 November 2007, the Commission asked the UK authorities to provide further information and to clarify a number of aspects of the notification. On 22 January 2008, the UK authorities submitted their reply.

#### II. DESCRIPTION

*Background: Digital Switchover and Public Service Broadcasting in the UK: A Brief Overview*

- (5) The system of Public Service Broadcasting (“PSB”) in UK television has evolved over the course of more than 70 years and competition was introduced gradually into the system: Independent television (ITV) was launched in 1955, BBC Two went on air in 1964, Channel 4 came into being in 1982, and Channel 5 (later Five) was launched in 1997.
- (6) Three appear to be the major sources of PSB in the UK:
  - the BBC has historically been at the heart of the PSB system, with wide-ranging public service obligations. The corporation is exempt from commercial pressures, due to its licence fee funding, and as such has been able to maintain a broad portfolio of public service activities across television, radio and, more recently, new media,

- Channel 4, although financed by advertising, has an embedded specific public service remit to be distinctive and to experiment, innovate, educate and reach culturally diverse audiences freed from some of the restrictions on other commercial broadcasters, notably shareholder returns and some programming quotas,
- commercial PSB broadcasters — ITV, Five and Teletext — also have specific programming obligations. The public service provision from the commercial players is delivered in return for privileged access to scarce analogue spectrum and the right to broadcast <sup>(3)</sup>.

- (7) In February 2005, Ofcom published the final report and conclusions of its statutory Review of Public Service Broadcasting (PSB) <sup>(4)</sup>. Previous phases of the Review underlined why the framework for delivering PSB would need to change. In those phases, Ofcom highlighted amongst other that the existing terrestrial analogue model of commercially-funded PSB will not survive the transition to digital and may erode rapidly prior to 2012.
- (8) Phase 3 of the PSB Review committed Ofcom to conduct a more detailed review of Channel 4’s financial position in 2006/07. The PSB Review identified that changes in the market are threatening the established PSB system, in the sense that the move from analogue to digital, and consequently multichannel, television may mean it is no longer realistic to expect commercial broadcasters to deliver significant PSB obligations due to their fragmenting audience base. In particular, a key issue of the review concerned the future viability of and operating model for Channel 4.

#### Channel 4

- (9) C4 Television Corporation (C4C) is an operator providing public service broadcasting whose principal function is to provide the public service television channel called “Channel 4”. It is incorporated as a not for profit public corporation but run on a commercial basis. C4C receives no direct financial support from the State and all of its income is derived from its channels, such as by the sale of advertising and the commercial sponsorship of programmes, and from other commercial activities connected with its channels, such as the sale of books and DVDs.
- (10) Channels 4’s public service programming remit is defined in Section 265(3) of the Communications Act 2003:
 

“The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular:

  - (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
  - (b) appeals to the tastes and interests of a culturally diverse society;

<sup>(3)</sup> Ofcom makes reference to a fourth source of PSB, the broadcasting market at large which includes all other commercial broadcasters which while not explicitly entrusted with a PSB remit and have received no funding or privileged access to spectrum, nonetheless produce content that meets the PSB purposes although the supply is not guaranteed, see “Digital PSB, Public Service Broadcasting post Digital Switchover”, Ofcom Issue Paper, 27 July 2007, p. 6.

<sup>(4)</sup> Section 264 of the Communications Act 2003 required Ofcom to report on the effectiveness of the existing television public service broadcasters — BBC, ITV, Channel 4, S4C, Five and Teletext — in the delivery of their PSB obligations; and to make recommendations for maintaining and strengthening the quality of PSB for the future.

<sup>(2)</sup> OJ C 320, 15.11.2001, p. 5.

- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character”.
- (11) C4C's statutory powers permit it to engage in activities apart from the provision of Channel 4 itself. On this basis, C4C has launched a series of other channels: two general entertainment channels called “E4” and “More4”, a film channel called “Film4”, and “C4 + 1”, which runs Channel 4's schedules an hour later than the channel itself <sup>(5)</sup>. These channels are not public service channels under current legislation, and do not have public service remits.
- (12) C4C is not permitted to engage in any commercial activity only for financial reasons: Section 199(1) of the 2003 Act provides that “the activities that C4C are able to carry on include any activities which appear to them”:
- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and
- (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.
- (13) Section 199(2) of the 2003 Act defines the “primary functions” of C4C as securing the continued provision of Channel 4, and the fulfilment of that channel's public service remit. Schedule 9 to the Act makes detailed provision as to the regulation of C4C's commercial activities by Ofcom who must approve arrangements prepared by C4C concerning the management of those activities, and those arrangements must (in particular) address any risks those activities could pose to the fulfilment of the primary functions, and financial transparency as between the primary functions and other activities.

#### *The funding of C4C*

- (14) As stated above, C4C is run on a commercial basis only and does not receive any State funding. C4C financial results for 2006 showed post-tax profits of GBP 14,5 million on a turnover of GBP 937 million, compared with GBP 48,5 million post-tax profits on a turnover of GBP 894 million in 2005 <sup>(6)</sup>.
- (15) In the past, in order to ensure that Channel 4 can continue to provide public service broadcasting, the UK Government introduced a “safety net” in the form of a financial support that would be funded by a levy on the

Channel 3 licence holders (that is, ITV) if Channel 4's advertising revenue proved insufficient. The commercial success of Channel 4 was such that the system never needed to be activated, and was repealed in 2003.

#### *C4C and digital switchover*

- (16) Channel 4 operates under a licence granted to C4C by Ofcom. New licences were granted to ITV, Channel 4 and Five by Ofcom in December 2004, and in common with the other new licences, the Channel 4 licence requires C4C to provide the service in digital form, and to deliver that service by digital terrestrial television so as to secure coverage that is equivalent to, or substantially the same as, that currently achieved by the analogue service. According to those licences, switchover must be completed by 31 December 2012. C4C was obliged to accept the new licence whereas the legislation gave ITV and Five the opportunity to refuse the new licences.
- (17) As part of the UK Government's switchover policy, all the operators of the PSB multiplexes will need to extend their transmission network from the current 80 digital transmitters to the 1 154 transmitters currently used for analogue transmissions.
- (18) Channel 4, in digital form, is currently delivered on the *Digital 3 & 4 multiplex* (as well as on cable, satellite and DSL). That multiplex carries the national and regional ITV channels, Channel 4 and the free to view, commercial channels E4, More4 and C4 + 1 (all 100 % owned by and provided by the C4C). The licence for this multiplex is held by Digital 3 & 4 a company which is owned in equal shares by the ITV companies and C4C. 48,5 % of the capacity is reserved for ITV, 48,5 % for C4C, and 3 % for the digital version of the public Teletext service.
- (19) C4C pays carriage charges to Digital 3 & 4 — the multiplex licence holder and operator. They are charged at cost, and charges are apportioned between the two main users of the multiplex in proportion to the capacity reserved for them. Thus, C4C and ITV each pays 48,5 % of the multiplex's costs <sup>(7)</sup>.
- (20) In turn, the multiplex operator must negotiate with the owners of transmitting masts and sites and the providers of “managed transmission services” to secure the physical transmission of the services carried on the multiplex. Negotiations for new digital terrestrial transmission contracts were concluded in August 2007. The masts and sites owners actually will incur the capital expenditure needed to build the transmission network in order to meet the coverage obligation in the new licences. They will recover those costs from the multiplex operator over the life of the transmission contract, and the multiplex operator will in turn pass those costs on to the broadcasters seeking carriage.

<sup>(5)</sup> E4, More4, Film Four and C4 + 1 are owned and operated by 4 Ventures Ltd, which is 100 % owned by C4C.

<sup>(6)</sup> These results are for the C4C group which includes Channel 4, all other non PSB channels, its new media activities (Channel 4.com), and Channel 4 International Limited which is responsible for the exploitation of secondary rights. C4C also has partial stakes in a number of other subsidiaries including One Word Radio Limited in which C4C holds 51 % of the equity, and the 4 Digital Group Limited (which holds the licence to a national DAB multiplex) in which it has a 55 % stake. It also holds 50 % of a joint-venture digital channel business with Emap, a very successful UK media corporation. 4 Ventures also holds equity stakes in a number of other businesses including Popworld (29 %), SwitchCo (11 %), Espresso Broadband (10 %), Taste of London (50 %).

<sup>(7)</sup> C4C, by internal accounting, imposes a notional charge on Channel 4 and the other C4C channels for the capacity they occupy.

(21) In its notification the UK authorities have estimated that C4C's share (48,5 % of the total) of the costs of building out and running the *Digital 3 & 4* multiplex to the extent required to meet the coverage obligation in the new licence will be in the region of GBP [...] (\*) million through to the end of 2034. The elements of the capital costs of the project relevant to C4C are likely to be in the range GBP [...] million to GBP [...] million over the build-out period. Digital 3&4 has structured this into a 26 year management contract to manage the impact on their annual cash flows. The front-end of the management contract overlaps with the BBC's current licence fee period from 2008-2013. The amount payable by C4C over the latter period is GBP 14 million, of which GBP 7 million relates to the repayment of principal and the remainder to the cost of financing the capital over that period.

(22) To date, take-up of digital platforms is growing very rapidly in the UK. This has been driven both by rapid growth in digital terrestrial television (the Freeview platform), and continued growth by Sky (Satellite). Partly due to this rapid penetration of multichannel television, existing analogue channels as a whole have also lost share on every platform, due to increased competition from digital-only channels (although many of the more successful channel launches have been by the existing analogue channels themselves). Although analogue channels including the BBC and ITV have experienced over the last year a declining audience share, digital only channels have benefited from (and helped to cause) the main terrestrial broadcasters' declining audience share. In its "Issue Paper" of July 2006, Ofcom noted that the digital channels launched by the existing terrestrial broadcasters have actually performed better and have compensated in part for the decline in the flagship PSB (8).

#### *Main features of the aid*

(23) The UK government has announced that it will grant C4C GBP 14 million to enable it to meet the costs of digital switchover. The main features of the notified aid can be described as follows.

(24) The aid will be calculated according to the actual costs to C4C of the capital expenditure (not running costs) incurred in converting the DTT transmission network to a fully digital operation. Negotiations between Digital 3 & 4 and its preferred transmission provider (Arquiva) were jointly conducted by ITV and C4C in order to reach the most advantageous deal with its broadcast transmission service provider. The actual costs of converting the network will be known by the time the aid becomes payable.

(25) The aid will be funded out of the proceeds of the TV licence fee (levied on every household that uses a television to receive broadcast services) and administered and disbursed by the BBC. The level of the licence fee, and hence the level of income to the BBC, has been set in a

manner that takes account of the BBC's possible liability to pay aid to C4C.

(26) There will be a mechanism to ensure that the BBC is not over-compensated. The BBC will receive no more from licence fee proceeds than it is liable to disburse in aid to C4C or in meeting the reasonable administrative costs of the scheme proposed measure. In that sense, BBC is not in any way whatsoever the recipient or beneficiary of the aid, simply the administrator of the aid mechanism granted by the UK authorities to C4C.

### III. CHANNEL 4 FINANCIAL REVIEW BY OFCOM (JUNE 2007): THE LEK STUDY

(27) During the PSB Review in 2006, Ofcom found no strong evidence of a short term funding gap at the time of the review for Channel 4 which could threaten the delivery of its remit but stated that there would be a need to revisit the issue. In 2007, Ofcom carried out the *Financial Review of Channel 4* to assess the Channel 4 Group's financial viability in delivering its PSB remit by looking into the historic and current financial position of Channel 4 and the likely resilience of its funding model in the face of changing competitive pressures. To that end, Ofcom asked LEK, a financial consultancy, to undertake, on its behalf, a detailed review of Channel 4 Group's financial statements, business plans and management accounts for the past five years, and of its future performance projections. In parallel to the LEK's report, Ofcom examined the delivery of Channel 4's public service remit, mainly how Channel 4 defines and implements its remit.

(28) In short, LEK found that "there is likely to be a slow deterioration in the Group's surplus" to 2008 (9), but noted that since Channel 4 has "substantial" cash reserves, there would be "no immediate, pressing risk to Channel 4" (9). Even taking into account significant variations between their "low", "high" and "central" scenarios, LEK identified "no significant risk of intractable financial challenges emerging before 2010" (10), and "little evidence to suggest that Channel 4's remit delivery would need to be fundamentally compromised before 2010" (11).

(29) LEK, however, concluded that "it is likely that the Group will cease to be profitable around 2010, and will become increasingly unprofitable thereafter ... LEK's assessment is that Channel 4's funding model is likely, in the medium term, to become unsustainable". The Group's other channels are expected to move into profit in 2007 but LEK did not expect returns from this source to be sufficient to offset losses on the core channel (12).

(30) LEK identified the following as the key trends driving the C4C future performance (i) flat or declining advertising revenues; (ii) higher prices for acquired programming and competition for its original productions; (iii) cost inflation; and (iv) a more pessimistic view of the likely profitability of the Group's ancillary businesses than the group itself takes.

(\*) Confidential data.

(8) Ofcom: "Digital PSB, Public Service broadcasting post Digital Switchover", Issue Paper 27 July 2006, "For Channel 4 — where the main channel has performed well — strong digital share and revenues have meant its overall performance has improved substantially", p. 16.

(9) Section 3, paragraphe 3.2.

(10) Section 3, paragraphe 3.5.

(11) *Ibid.*

(12) Section 3, paragraphs 3.6 and 3.7.

- (31) In the light of this analysis, Ofcom took the view that the current and future market pressures on Channel 4 “could have a gradual, but cumulatively serious, impact on Channel 4’s delivery of its remit”<sup>(13)</sup>. For Ofcom, there is a wider issue of how to measure and enhance the monitoring of Channel 4’s PSB output<sup>(14)</sup>.
- (32) Ofcom considered that there is a need to be open to looking at fundamental reform of Channel 4’s financial model in the long term<sup>(15)</sup>. Contrary to LEK’s figures which suggested that there is time to monitor performance further before intervening, Ofcom considered that it might take time to identify and implement a long-term intervention and that accordingly there is a case for the UK government to look at short-term, transitional measures which:
- they would provide support during the transitional period between now and 2011-2012,
  - they would be quantifiable and hence provide the Group with greater certainty,
  - the Group would be able to demonstrate how these measures would help delivery of Channel 4’s remit,
  - they would not have long-term effects or implications for longer-term policy<sup>(16)</sup>.
- (33) Although Ofcom expressed no opinion on the notified aid, the UK authorities consider that the notified aid meets Ofcom’s above listed criteria.

#### IV. COMMENTS FROM THE PARTIES INVOLVED

##### *The UK position: the justification for the aid*

- (34) The UK authorities argue that the aid to C4C is justified for two main reasons. First, as a public corporation with no shareholders, C4C has no access to the capital markets; and second, any calls on its resources would mean that there is less money available for other aspects of the business, including public service programming, since the reserves accumulated from previous years are finite and partly required to fund the working capital requirements of the business<sup>(17)</sup>.
- (35) In cash terms, in 2007 C4C will have spent GBP 636 million on programming for Channel 4 and its other non-PSB digital channels. At the same time, the UK expects that income from Channel 4 over the same period is likely to fall, as a result (in particular) of the fact that, in a fully digital environment, Channel 4’s audience share will drop, with a corresponding effect on advertising revenue. In particular the UK has produced data showing that

Channel 4’s share of viewing is highest in an analogue terrestrial home (14,5 %) with access to only five channels, and lowest in a cable or satellite home having hundreds of channels available (6,7 %). Digital switchover would mean that the number of analogue terrestrial homes — where Channel 4 performs best — will eventually fall to zero as the remaining homes in the UK without digital television are required to opt for one or the other of the multi-channel platforms.

- (36) The UK authorities add that while its audience is bound to decline with the advent of the DTT and the multichannel home environment, C4C must still assume the costs of simulcasting in analogue and digital mode until switchover is complete.
- (37) Accordingly, the UK authorities argue that the negative effect of switchover on C4C’s financial position is significant. Although the proposed GBP 14 million aid is relatively small when compared to Channel 4’s total programming expenditure, the aid will have a significant impact on the ability of C4C to continue to deliver its public service remit. As a commercial broadcaster, C4C’s funding model involves an implicit cross-subsidy whereby its most profitable programming generates commercial surpluses to finance loss-making programming, particularly in traditional PSB genres such as News and Current Affairs, characterised by high costs and limited revenue potential. Without the aid, C4C may be forced to divert expenditure away from certain genres which deliver significant public value in order to focus on more commercial programming. In other words, without the aid, the costs of digital switchover will have a direct impact on the resources available to C4C to meet its public service remit. Moreover, since the obligations of digital switchover and the associated costs are essentially attributable to the Government’s switchover policy, the UK authorities consider it appropriate for there to be a contribution to those costs from public resources.
- (38) Thus, the UK authorities believe that it is appropriate to remove one of the pressures being faced by C4C, by granting State aid to give C4C assistance with meeting the capital costs involved in converting to a digital transmission the network that carries Channel 4.

##### *Aid compatible with the Treaty*

- (39) The UK authorities accept that the notified measure constitutes aid within the meaning of Article 87(1). It argues however that the measure is compatible with the Treaty by virtue of Article 86(2) EC, having regard to the Commission’s Communication<sup>(18)</sup> on the application of the State aid rules in relation to public service broadcasting (“the Communication”) and the three particular criteria according to which the compatibility of aid of this nature falls to be judged, namely, definition, entrustment and proportionality.

<sup>(13)</sup> Section 3, paragraph 3.16.

<sup>(14)</sup> Section 3, paragraphs 3.16 and 3.17 and Section 5, paragraph 5.10.

<sup>(15)</sup> See Section 5, paragraphs 5.35 to 5.40.

<sup>(16)</sup> Section 5, paragraphs 5.24 to 5.27.

<sup>(17)</sup> The UK acknowledges that C4C’s currently healthy cash balances are being used to acquire increased commercial footprint and further cross-media access, e.g. moving into radio to address long term structural issues, including through investment in a company which secured the newly-awarded national DAB multiplex as a joint venture with a consortium of radio broadcasters.

<sup>(18)</sup> Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04) (OJ C 320, 15.11.2001, p. 5).

- (40) In particular, Sections 231, 264 and 265(3) of the Communications Act 2003, taken with the new licence, satisfy the “definition” criterion. Sections 23 and 24(3) of the Broadcasting Act 1990 and Section 265(3) of the 2003 Act, along with the licence, will further satisfy the “entrustment” requirement <sup>(19)</sup>.
- (41) With regard to the criterion of “proportionality” the UK authorities consider that the sums paid in support of Channel 4 will not exceed the capital costs of providing near-universal coverage as a public service, and that any market distortions implicit in the funding could not be avoided or reduced by adopting another means of delivering or funding the remit. They argue that the aid will correspond to the capital costs of converting the transmission network to digital broadcasting by analysing the charges paid by C4C to the multiplex operator for the transmission of its services. The UK authorities clarify that the costs to expand the multiplex are fixed regardless of any other channels that may be carried alongside Channel 4. Likewise any income or other economic advantage (higher advertising revenues from a larger audience) will need to be deducted from the amount of the aid. Although in the long term C4C will no longer have to incur any simulcast costs, which will help to reduce the overall cost of C4C, the UK authorities consider that if C4C is entitled to an aid for the capital costs of digital conversion, it is also entitled to any consequential benefits that may result thereof.
- (42) The UK authorities acknowledge that C4C has built substantial cash reserves through time (up to GBP 170 million). They argue however that a significant portion of those reserves is required to manage C4C’s working capital requirements (an average of GBP 75 million per month). Its average capital balance for 2007 stood at GBP 137 million. The UK argues that contrary to allegations by others, C4C need to keep these reserves to protect against revenue variations and to make further investments in new business activities that could offset the expected decline of the core PSB channel.
- (43) Finally, the aid will not allow C4C to distort competition in the advertisement market, given that the advertisement market does not operate on the basis of discounted rates, but on the basis of annual purchases of airtime that deliver a number of “impacts” to the advertiser.
- (44) In their reply to a request for further information, the UK authorities further clarified that the aid to C4C is indented to address not only the capital costs of switchover but also the broader impact that switchover will have on C4C medium-to-long term financial performance.

#### *The complainant’s position*

- (45) Although supportive of the PSB system and the State’s intervention to maintain and sustain a high level of PSB, the complainant considers that the proposed aid to

<sup>(19)</sup> The “definition”, “entrustment” and “proportionality test” are the three cumulative conditions that need to be met in order or a measure to benefit from the derogation of Article 86(2), see paragraph 29 of the “Broadcasting” Communication, op. cit.

Channel 4 is not justified. Channel 4 has accumulated reserves of around GBP 150 million through its commercial operations and is thus in a position to face up to the expected short term challenges identified by the LEK report and the Ofcom review.

- (46) The complainant considers that the question whether in the longer term the funding mechanism of Channel 4 should be reviewed in detail to take into account the changes in the broadcasting market post digital switchover is a wholly separate issue, one which is currently under review by Ofcom. The aid should not therefore be used to address the longer term issues facing Channel 4 under the disguise of a support mechanism for the capital costs of digital switchover.
- (47) More importantly, the complainant argues that the current decision-making process has been opaque given that there has not yet been any kind of assessment of the costs for Channel 4 to deliver its PSB remit. As a result, there is no correlation between the GBP 14 million aid pledged for Channel 4 and the alleged threat that digital switchover will have on the delivery of its PSB remit.
- (48) The complainant stresses that during the period 1999-2005, all the non-PSB commercial activities of Channel 4 made cumulative losses of GBP 200 million which were offset by the profits made by the core Channel 4. The complainant argues that the aid will allow C4C to continue subsidising its non PSB commercial channels distorting competition in the market. For the complainant, C4C would be better off in the coming years sub-leasing the free DTT spectrum in has received for its other non-PSB channels and reinvest the money to support the core PSB channel. The complainant estimates that subleasing the “free” spectrum used by the 3 commercial channels between 2007-2012, C4C would have between GBP 52 and GBP 116 million more than if it continued to provide its digital channels.

## V. ANALYSIS

### 1.1. The existence of aid

- (49) Article 87(1) of the EC Treaty states:

“Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”.

- (50) In order for aid in the sense of Article 87(1) to be present, there needs to be an aid measure imputable to the State which is granted by State resources, affects trade between Member States and distort competition in the common markets, and confers a selective advantage to undertakings.

(51) In the present case, the Commission notes that the notified measure: (i) constitutes a transfer of State resources to C4C <sup>(20)</sup>; (ii) it would favour a particular undertaking in the market, C4C — BBC is not a recipient or a beneficiary of the aid insofar as BBC will receive no more from the licence fee proceeds than it is liable to disburse in aid to C4C or in meeting the reasonable administrative costs of the proposed measure (see paragraphs 25 and 26 above; (iii) by helping C4C to meet switchover costs that other broadcasters might need to meet themselves it would distort, or threaten to distort, competition; and (iv) it could affect trade between Member States in that C4C operates in a European market, even though it is providing public service broadcasting in the UK — for example, it competes with other broadcasters for sports and other programme rights, and the market for the sale of broadcast advertising is to an extent international. The UK authorities have stated in the notification that the notified measure constitutes aid within the meaning of Article 87(1) of the Treaty.

#### Conclusions

(52) In the light of the foregoing the Commission can therefore conclude that the notified State measure, in as much as it confers an advantage to C4C which is likely to distort competition and affect trade between Member States constitutes an aid within the meaning of Article 87(1).

### 1.2. The compatibility assessment

#### Preliminary remarks

(53) It should be recalled that the Commission is in principle in favour of public support for the digital switchover provided that a number of conditions are respected. In particular, the Commission has stated in the past that it would take a favourable view for “financial compensation to public service broadcasters for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate” <sup>(21)</sup>.

(54) However, the situation of Channel 4 is different in some respects from that of other public service broadcasters. Although entrusted with a PSB remit, Channel 4 is supposed to conduct all of its business and operations on the strength of its commercial activities only. Thus, C4C

does not receive any public financial support (like the BBC does through a licence fee or any other mechanism to that effect) but relies on the strength and the flexibility of a commercial operator to deliver its PSB remit. For that reason, there is a need to ensure that the market conditions within which C4C competes against other commercial broadcasters is not distorted by the notified measure. In this respect, the Commission notes that C4C, relying on the strength of its recent commercial successes, has over the last years launched other broadcasting commercial channels, has ventured into video on demand services and has made a foray into new media internet activities, increasing its market share and advertising revenues. Therefore, one would have expected that Channel 4, as the complainant has argued, might be in a sound financial position and able to pay for the costs of its digital expansion, drawing on its current cash reserves and commercial revenues.

(55) It is equally true that as Ofcom has noted in its Review of Channel 4’s financial situation, in the future, Channel 4, like any other traditional analogue broadcasters, will most likely have to compete within a fiercely competitive digital multichannel environment, vying for advertising revenues and audience capable for sustaining the delivery of its PSB remit. In that sense, digital switchover presents new challenges for existing analogue broadcasters (but also more opportunities). In the present case, for the reasons explained in more detail below, the information provided by the UK does not enable the Commission to assess whether or not, taking into account the market development, C4C will have in the short term a net public service cost which could justify the granting of State aid. If such net public service cost cannot be demonstrated, any grant of State aid by the UK authorities would imply overcompensation of C4C.

#### Assessment of compatibility under Article 87(2) and 87(3)

(56) As stated in the Broadcasting Communication, State aid provided for public service broadcasting must be examined by the Commission in order to determine whether or not it can be found compatible with the common market. The derogations listed in Article 87(2) and Article 87(3) can be applied. However, the UK authorities have not relied on any of the above mentioned provisions nor have they argued that the notified aid falls under the cultural exemption of Article 87(3)(d). Instead, the UK authorities have argued that aid should be declared compatible under Article 86(2) concerning services of general economic interest.

#### Assessment of compatibility under Article 86(2): Risk of overcompensation

(57) As the Court has consistently held, Article 86 provides for a derogation and must therefore be interpreted restrictively. The Court has clarified that in order for a measure to benefit from such a derogation, it is necessary that all the following conditions be fulfilled: (i) the service in question must be a service of general economic interest and clearly defined as such by the Member State (definition); (ii) the undertaking in question must be

<sup>(20)</sup> That conclusion is not affected by the fact that the aid will be funded from the proceeds of the licence fee of BBC. As the Commission found in the past, “the compulsory legal nature of the licence fee [of BBC] and the express approval by the State for the financing of the service from licence fee funds unequivocally establish the use of state resources”; see Commission Decision of 1 October 2003, State aid 37/03 — United Kingdom, “BBC Digital Curriculum”, at paragraph 21.

<sup>(21)</sup> See in particular, IP/05/1394 issued at the time of the adoption of the Commission Decision in case C 25/2004 “DVB-T Berlin-Brandenburg” where the Commission also explained how digital TV could be supported. The Commission is in favour of public support for the digital switchover also for broadcaster’s activities beyond what is covered by their public service remit. As the Commission has stated in the past, grants can “aim at covering part of the additional cost of broadcasters caused by the additional burden to broadcast both in analogue and digital mode” and “it is also possible to award grants to broadcasters for investments enabling digital signal transmission”. Beneficiaries of such grants can be both private broadcasters and public service broadcasters. Such grants have to be technologically neutral, beneficiaries have to be selected in open calls for proposals, the funding has to be necessary for the realisation of the project and be limited to the directly attributable, actually incurred eligible costs for the projects; see Commission decision of 16 March 2005, N 622/03 — Austria, “Digitalisierungsfonds”.



- explicitly entrusted by the Member State with the provision of that service (entrustment); and (iii) the application of the competition rules of the Treaty (in this case, the ban on State aid) must obstruct the performance of the particular tasks assigned to the undertaking and the exemption from such rules must not affect the development of trade to an extent that would be contrary to the interests of the Community (proportionality test). In the present case, it is not contested that the two first above mentioned conditions that is "definition" and "entrustment" are fulfilled. Indeed, Channel 4 has been entrusted by law with the delivery of a public service remit and is also subject to the supervision of Ofcom. Channel 4's public service programming remit has also been defined in Section 265(3) of the Communications Act 2003.
- (58) The Commission has doubts as to whether the financial support pledged for Channel 4 is necessary and proportional within the meaning of the Broadcasting Communication. As mentioned above, the Commission's practice has been to accept that public service broadcasters can receive aid for the extra capital costs that result from their obligation to switch to digital transmission and their obligation to continue covering as large a territory as in the analogue era. In fact, BBC is funding its own digital switchover from a corresponding increase in the licence fee.
- (59) As stated above, Channel 4 position is however different to the extent that its PSB remit is funded and supported exclusively by the commercial activities (advertising revenues) of its core channel and all its other broadcasting, non-PSB channels. Thus, to the extent that C4C may have the financial resources to meet its PSB obligations on the digital terrestrial platform (cash reserves), the mere fact that the switchover may affect its profitability (but not viability) does not constitute a valid reason for claiming State funding.
- (60) In particular on the basis of the LEK report, the Commission has doubts as to whether there can be a proper or adequate justification for the aid given to Channel 4 given the basic conclusion of the report according to which, although there may be a long term funding issue for Channel 4, in the short to medium term Channel 4 faces the prospect of declining profits, not the loss of its ability to deliver its PSB remit or indeed to maintain its current scheduling.
- (61) In fact, in a recent Statement by Channel 4 concerning its Programme Policy for 2007, it is said that „continuing the corporate strategy initially set out in 2004, Channel 4 will extend the values of its remit across the digital channels More4, E4 and Film4 and in its new media services without diminishing its core channel offer. For the first time, Channel 4's entire digital TV channel portfolio will be available free-to-air on all digital platforms for the whole year in 2007. New media activities will increase considerably, with a 2007 budget of 22 million-key developments will include the re-launch of E4.com, improvements in the 4oD video on demand service, new automated online programme support and the redesign of channel4.com with new web2.0 tools for use across Channel 4 sites”.
- (62) Far from indicating any kind of financial difficulties or challenges, the above 2007 Statement shows that C4C will not only maintain its core channel offer (thus no perceived threat to its PSB remit delivery) but will also invest in new media, relaunch some of its non-PSB channels and invest in new video on demand services.
- (63) In its reply to the Commission request for information, the UK authorities stated that the aid is not only intended to cover the capital cost of digital switchover, but also the overall impact of switchover on Channel 4's medium to long-term financial performance. However, Channel 4's long-term financial performance is a separate issue, linked to the question of what kind of funding support Channel 4 will need in the future to deliver its PSB remit.
- (64) This exercise would require assessing the costs for delivering Channel 4's PSB remit. This has not been done by the UK authorities for the purposes of the notified aid mechanism. Accordingly, the Commission does not have at this stage the required information to assess whether the aid in question is indeed necessary and proportional to help Channel 4 meet its PSB remit post digital switchover. In fact, given that C4C is not currently facing any financial difficulty, the necessity of the notified aid is not clear.
- (65) The Commission's doubts are further compounded by the fact that all the other non-PSB Channels of C4C are also benefiting from the digital expansion of the 3 & 4 Multiplex given to C4C without bearing the relative costs<sup>(22)</sup>. At this stage, it is not clear to the Commission why the non-PSB commercial activities of Channel 4 should benefit from the aid to Channel 4 if they are not entrusted by law with the delivery of a PSB remit.
- (66) In its reply to the request for information, the UK authorities stated that the current reserves of C4C (around GBP 145 million) are earmarked to meet the monthly capital expenditure of the Corporation and cannot be treated as proper reserves. At this stage, however, it is not clear to the Commission why the current reserves of C4C could not also be used for the costs of digital switchover and should only be used for the on-going financing of C4C's current and new media and broadcasting activities that are non related to C4's PSB remit.
- (67) It may be recalled that in the most likely scenarios, LEK's analysis of Channel 4's business model points to declining profits from 2008 onwards. However, as Ofcom has also confirmed, in these scenarios Channel 4's cash reserves are more than sufficient to ensure the survival of the core channel until at least 2010, "fluctuations in working capital notwithstanding"<sup>(23)</sup>. This conclusion by Ofcom is at odds with the UK authorities' position that the cash reserves should remain intact to protect C4C against possible fluctuations in the working capital requirements. In more positive scenarios, LEK's analysis indicates that Channel 4's business model may be able to deliver stable profits and growing cash balances throughout the period to 2012. According to Ofcom, the above suggests that in LEK's projections there are unlikely to be "immediate, intractable financial pressures that would require Channel 4 to make significant reductions in its remit delivery before around 2010".

<sup>(22)</sup> Non-PSB channels would not meet any of the investment costs related to the digital expansion. As mentioned in footnote 7, C4C currently charges non-PSB channels for the spectrum capacity they occupy by internal accounting.

<sup>(23)</sup> Ofcom, *Channel 4 Financial review*, Statement, 14 June 2007, page 1.

- (68) From 2010 onwards, LEK suggests that financial pressures on the core channel are likely to grow. However, the timing and extent of the pressures cannot be predicted with certainty. If the programme mix remains unchanged, LEK's analysis suggests that Channel 4's commercial performance is likely to deteriorate, as a result of increasing competition for its most profitable programmes, and some ongoing inflation in other programme costs at a time of flat or declining advertising revenues.
- (69) These scenarios are however separate issues not linked as such to the capital costs of digital switchover, but to the consequences of the digital switchover itself. The analysis of these scenarios may result in an assessment of the ability of Channel 4 to deliver its PSB remit in a multi-channel digital environment. Such an analysis however has not been undertaken by the UK authorities in the notification. The Commission notes that this issue is currently being analysed by Ofcom and no conclusions are available at this stage.
- (70) One would have expected Channel 4 to have made an analysis of the expected costs of the public service and expected revenues from the commercial exploitation of that service (which according to the broadcasting communication must be discounted from the public service costs) in order to assess whether the capital costs of switchover can be met, or whether State aid is necessary.
- (71) It is important to stress here that Ofcom in its latest financial review of Channel 4 (see above paragraph (32)) did not rule out the adoption of short term measures "*if they helped Channel 4 avoid making reductions in its public service delivery in response to uncertainty about its financial position*". For Ofcom such measures would need to have the following characteristics: (i) provide support between now and 2011-2012; (ii) their impact could be quantified and known to Channel 4 with a reasonable degree of certainty; (iii) Channel 4 would be able to demonstrate how such measures would help the core channel continue to deliver its remit; and (iv) such measures should not have any lasting consequences that might prejudice the Government's longer term policy for Channel 4 <sup>(24)</sup>. Even if we were to accept that the notified aid is in fact a short term measure aimed not so much at enabling Channel 4 meeting the capital costs of digital switchover, but the declining profitability in a multichannel competitive environment, the notified aid does not appear to have any of the above characteristics. In fact, although the notified measure does not appear to have any long lasting effect on

how Channel 4 may operate in the future, there has not been any quantification so far of the net costs of C4Cs PSB remit in a digital environment, neither Channel 4 has demonstrated that the aid will be necessary to deliver its PSB remit.

#### Conclusions

- (72) According to the broadcasting communication, in the case of State support for public service broadcasting, in order to determine whether there is overcompensation, the Commission would need first to determine the gross costs of the PSB, deduct the benefit of the commercial exploitation of the public service (e.g. advertising) so as to obtain the net public service cost. Moreover, the Commission has to ascertain that the broadcaster in question does not engage in distortions of competition which are not necessary for the fulfilment of the public service mission. Only if there is a net cost, then the said broadcaster should be entitled to obtain State aid.
- (73) The information provided so far by the UK does not enable the Commission to assess whether or not given its digital switchover obligations, C4 will have in the short term net public service costs which would allow it to receive State aid.
- (74) To conclude, the Commission doubts whether the notified measure is compatible with the common market.

#### VI. DECISION

- (75) In the light of the foregoing considerations the Commission requests the UK authorities to provide all necessary information to demonstrate (on the basis of the appropriate financial data) that the aid they intend to grant to C4 is necessary in order to enable C4 to deliver its public service remit, and is not going to result in overcompensation, taking into account also the revenues of C4C from its commercial activities.
- (76) The Commission request your authorities to forward a copy of this letter to the recipient of this aid immediately.
- (77) The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient."

<sup>(24)</sup> Ibid at p. 5.