



20.9.2013

NOTICE TO MEMBERS

Subject: Petition 1633/2012 by Mara Bizzotto, Gino Agerde and Rosario Boschieri on behalf of the *Comitato Libera informazione Radio Televisiva (Italian)*, with 11432 signatures, on the conflict of the RAI TV (Italy) licence fee with EU law1. Summary of petition

The petition is calling for the abolition of the compulsory RAI TV licence fee in Italy. According to the petitioners the fee constitutes illegal state aid and infringes free competition in the European Union and, in particular, is in breach of Article 86 and 87 of the TFEU.

The so-called RAI licence fee, which makes up about 50% of the company's annual revenue, is a compulsory tax on audiovisual services for the sole benefit of RAI public state television.

2. Admissibility

Declared admissible on 24 May 2013. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 20 September 2013

The petition is calling for the abolition of the RAI TV licence fee in Italy, a compulsory tax imposed on all owners of an appliance capable of receiving broadcast signals (including those circulating temporarily in Italy), for the sole benefit of the public broadcaster RAI. The fee accounts for around 50% of RAI's annual revenue.

The petitioners challenge the fee, the financing of the RAI, as well as RAI's public service mission and its respect thereof. According to the petitioners, the fee constitutes illegal state

aid which is not in line with the compatibility conditions set out in Articles 106, n. 2, TFEU (ex-Article 86, n. 2, of the EC Treaty).

The Commission's observations

European Union law¹ recognises the role of public service broadcasters and the freedom of Member States to organise public service broadcasting and its financing system. Therefore, it is within the competence of the Member States to determine the form, e.g. by way of a fee, and conditions of public funding insofar as such funding does not affect trading conditions and competition in the EU to an extent which would be contrary to the common interest. In principle EU law prohibits state aid, but the TFEU also provides for exceptions to this general prohibition. In the area of broadcasting, for instance, state financing of a public service broadcaster for the fulfilment of its public service remit can be declared compatible with the internal market if certain conditions are met (see the Commission's Broadcasting Communication²).

In this respect, the Commission's task is to monitor compliance with the EU State aid rules. In particular, as clarified in the Broadcasting Communication, the Commission has to assess whether state aid granted to public service broadcasters is limited to what is necessary to finance clearly defined public service obligations entrusted to them, and that such aid does not lead to unnecessary distortions of competition. Provided that these conditions are fulfilled, the State funding of public broadcasting can be considered as compatible with the internal market.

The Commission specifically assessed compliance with EU State aid rules of the RAI license fee and RAI's public service mandate in its decision of 20 April 2005³. In that decision, it found that the financing of RAI through the licence fee constitutes existing State aid compatible with the internal market. In particular, the Commission noted that RAI was officially entrusted with a public service mission and that the definition of the RAI's public service remit was sufficiently clear and precise and did not contain any abuse. In the light of additional measures adopted by Italy in 2004, state aid to RAI was found compatible with the internal market.

The petition also says that RAI has been fined on several occasions and that a class action was filed against it for not respecting its public service remit. This seems rather to indicate that the control mechanisms put in place at national level to ensure that RAI respects its public service remit are effective.

Finally, the petition challenges the transfer by RAI of its satellite channels RAISAT to SAT TV, claiming that this results in RAI reaching fewer users and obliging users to purchase a decoder. However, this transfer does not seem to imply, as such, that RAI does not fulfil its

¹ Protocol to the EC Treaty on the system of public broadcasting in the Member States, annexed to the Amsterdam Treaty ("Amsterdam Protocol").

² Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 351 of 27.10.2009, p. 20:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:257:0001:0014:EN:PDF>.

³ Decision of 20 April 2005 in State Aid case E9/2005 (ex C 62/1999) - Italy – RAI licence fee,
http://ec.europa.eu/competition/state_aid/cases/198589/198589_605065_30_2.pdf.

public service mission, as described in Commission decisions of 15 October 2003¹ and 20 April 2005. In any event, as indicated above, there are national control mechanisms to ensure that RAI complies with its public service remit. In this respect, it should also be noted that the public support for public service broadcasters is neutral as to the platform used for broadcasting.

In those circumstances and on the basis of the available information, the Commission does not consider that the state financing of RAI constitutes an illegal and incompatible state aid. It therefore does not consider it appropriate to (re-)open a state aid investigation regarding RAI at this stage.

Conclusion

The Commission has previously investigated the financing and the public service remit of the Italian public broadcaster, RAI, under the state aid rules and has found that it was compatible with the internal market. On the basis of the information available, the Commission does not consider it opportune at this stage to (re-)open an investigation regarding the state financing of the Italian public broadcaster RAI.

¹ Commission Decision of 15 October 2003 on the measures implemented by Italy for RAI SpA, published in the OJ L 119, 23/04/2004, p.1.