



**Response of the Association of Commercial Television in Europe to the Commission
Public Consultation on a Future European Union MEDIA Programme
(Support for the European audiovisual sector)**

The Association of Commercial Television in Europe (ACT) welcomes the opportunity to respond to the European Commission's consultation on a future European Union MEDIA Programme.

The ACT represents the interests of the commercial broadcasting sector in Europe. Formed in 1989, the ACT has thirty-one member companies based in more than 30 European countries and available worldwide to millions of citizens. Our members operate several hundred free-to-air and pay-tv channels and distribute many more channels and new services. The ACT members encompass several business models: free-to-air broadcasters and pay-TV players, digital platform operators and multimedia groups.

1. General comments

Commercial broadcasters recognise the important role the MEDIA Programme has played in the production of European content and welcome the opportunity to express their views on the way this Programme could evolve adequately with current economic and technological changes.

Recent experience shows that, while we remain sceptical as to many public interventions, whether regulatory or financial, in the programming business, there may be room for targeted public financial assistance to support genres which are suffering from market failure. The production funding available to producers and broadcasters in Ireland, Austria and Switzerland can form an interesting precedent here; in these markets, where the unusually strong dominance of the publicly-funded broadcaster has made it much harder than elsewhere for a "dual system" of commercial and public broadcasting to be established, this funding has been used to address a specific market failure and can be considered legitimate. In the event that the European Commission concludes that there is a market failure in pan-European co-productions – an analysis from which we would not dissent – so a similar targeted system of MEDIA Programme financing could be an interesting way of addressing this issue.

However, to date, producer-broadcasters have been excluded from participation in the funding programmes of EU audiovisual policy. The time is now right to allow to all players to access to all parts of the MEDIA Programme. A blanket discrimination in favour of independent producers no longer reflects market reality. This discrimination was presumably based on a perception that producer-broadcasters were larger operators, an outdated assumption about programme-making which may by now be hampering the development of the European audiovisual market. The MEDIA Programme has set itself the goal of achieving the objectives of the new "Europe 2020" Strategy for smart, sustainable and inclusive growth. If this goal is to be taken seriously, then it is essential that all producers are allowed to participate.

2. Evolution of the broadcasting sector

When the MEDIA Programme was first launched, the television market was still relatively concentrated, and very national. This had two consequences which are relevant to the structure of the MEDIA Programme: the fact that broadcasters were, at that time, presumed to have a degree of market power meant that some Member States had taken pro-active policy measures to encourage the growth of a competing “independent” production sector. Secondly, viewers’ overwhelming preference for national content led to a degree of scepticism among European broadcasters as to the potential for co-productions – the famous “Euro-pudding” myth.

The market structure of the broadcasting sector has changed beyond recognition since the launch of the first MEDIA Programme in 1991. In 1989, 47 broadcasters were established in Europe; in 1994, around 100. Today 7,200 European broadcasters are available to European citizens. This figure encompasses small and large broadcasters and shows the greater diversity of the broadcasting offer in Europe. The number of players continues to increase: in 2009, despite the adverse economic climate, 344 TV channels were launched in Europe. Structural changes also have a clear impact on the broadcasting sector, including technological changes and their impact on modes of consumption, economic models and the value chain. Over the past three years, 720 new on-demand and catch-up audiovisual services were launched in Europe. Producer-broadcasters are diversifying their offers and - in particular as consumer demand evolves - are distributing their content on an increasing number of platforms including online and increasingly on demand. Accessing a range of content has become easier than ever for European citizens.

However, this positive evolution in terms of channels’ launches should not put out of sight the difficult economic times that broadcasters have faced over the past years due to the advertising recession. Broadcast transmissions attract less advertising than before, thus weakening investments in content.

When we consider the trends in the audiovisual market, and, in particular, the place of broadcasters in the audiovisual business value chain, it is at least arguable that, in some markets, the role of content aggregators and programme distributors historically played by broadcasters is now progressively being taken by third party aggregators. In such cases, broadcasters are increasingly relying on in-house productions and the traditional separation between broadcasters and producers no longer makes sense. This is at least the case in the vast majority of European countries where legislation does not impose legal obligations beyond the AVMS quotas on broadcasters to work with independent producers.

Regardless of the details, the message should be clear: if the sector to be supported is European production, then broadcasters are an essential part of it.

3. Evolution of the independent producers' sector

While many of policy interventions of the early 90s in favour of independent producers were, explicitly or otherwise, predicated on the wish to assist SME producers against broadcasters – assumed at the time to have unequal bargaining power in their control of the relatively few opportunities to get content on air – today, these assumptions are out of date and no longer form an adequate basis for European audiovisual policy. Clearly, it is meaningless to say that broadcasters have necessarily still a “gatekeeper” role in a world of over 7,000 possible outlets to distribute programming – barriers to market entry have disappeared. But the very success of the policy interventions referred to has been to create an independent production sector with real bargaining power. In the UK for example, since its inception in the early 80s, the independent sector has grown from being a pure “cottage” industry of creatives, beholden to (and trained by) the main broadcasters, to one in which several leading companies now generate significant revenues and profits and have attracted the renewed interest of the City. The sector generated revenues in 2005 of £820 million from first-run commissions alone¹. On a global level, the sector has seen recently a trend to consolidation, as acquisitive companies buy other production companies and as others seek critical mass through mergers. Today, independent producers have access to external funding with private equity and the access to the stock market.

Ownership has become more complex, and with it discussions about the status of “independence” – if defined purely by reference to a link to a broadcasting company; this overlooks the market entry of significant players from the ICT and hardware sectors. Indeed, some multinational production companies have succeeded in growing to become larger than the broadcasters in small and medium sized European countries, which underlines the obsolescence of any argument about protecting the weaker negotiation party. All the more so since, in some markets, independent producers have been mentioned as potential buyers for the main national free-to-air commercial network.

We do not oppose a political decision by the European Commission to favour co-productions involving one or more SME partners. But in today’s world, this should be accompanied by an explicit evolution in favour of broadcasters and producers committed to making their productions marketable on a pan-European scale. We believe the problem lies no longer exclusively with the size of the undertakings but also on the scalability of the production projects to be financed and on their potential to overcome the inherent market failure of linguistic and cultural fragmentation.

In addition, and taking in consideration the conclusions of the Study on the role of SMEs and European audiovisual works in the context of the fast changing and converging home entertainment sector², we should bear in mind that the Commission has a wide range of support available for European SMEs in different forms such as grants, loans and, in some cases, guarantees, but still there is no specific instrument for financing the SMEs of the home entertainment sector, which includes the television broadcasting companies.

¹ Evolution of the UK Independent Production Sector, 2005

² (http://ec.europa.eu/culture/media/programme/docs/overview/evaluation/studies/sme/sme_report_oct_2008.zip, page 245

Therefore, and in order to strengthen the production structure of the European audiovisual sector as a whole, and not only the independent production branch, the new European Union MEDIA Programme should be open also to television broadcasting companies.

4. Cross-frontier circulation of television programmes

Broadcasters today are also less sceptical as to the potential of co-productions. As production techniques have become more sophisticated, and budgets more demanding, so television producers have learned from the logic and positive experiences of cinema co-production, notably in sharing the risk involved in upfront financing of a large project. Co-productions such as *'the Tudors'* or *'Rome'* have played successfully in peak-time television in a number of European territories – with the historical settings perhaps helping diminish viewers' demand for a "local" feel to their evening's entertainment. Other European projects include *'Treasure Guards'*, a new production venture between ProSiebenSat.1 Group and Tandem Communications with a participation of Mediaset Group.

Perhaps most importantly, the phenomenal growth in international television formats – a field where independent producers hold several decisive cards - has helped produce a shift in attitudes: while local content remains the cornerstone of the schedule of any broadcaster who can refinance it, it is undeniably much easier for content to circulate outside its country of production than was the case twenty years ago. Our experience is that where an identifiable audience exists for non-national content, market players have been quick to meet that demand. To date, this has typically been the case for distribution into neighbouring countries with a common language, for targeted distribution at expatriate markets or for re-langued versions of content.

ACT member companies are increasingly active in many different methods of transfrontier distribution and have production affiliates and broadcasting deals in Africa, Asia and North and South America. For example, *'Engrenages'*, one of the flagship dramas of the French pay-operator Canal+ Group, is distributed via several partnerships in 26 countries such as Belgium, the Czech Republic, Denmark, Greece, Finland, Italy, Poland, Romania, Slovakia, and the UK in Europe and also in Australia and Japan. Such a wide distribution would have been much more rare in the early 1990s.

5. Suggestions for an appropriate revision of the MEDIA Programme's criteria

It is also important for the EU to review several criteria of the current MEDIA programme, and make them more flexible, in order for it to become more attractive, such as the amount of co-funding to be granted. This could increase from 20 to 25 percent of the total budget and each grant could not be less than €1 or 2 million per project. This is suggested on the assumption that any production or co-production which wishes to compete with Hollywood/Asian content will need a minimum budget of between €500,000 and €2 million per hour³. The current cap of €500,000 would struggle to finance more than one hour of audiovisual production at least in the drama genre, especially when taking into account the – entirely understandable and correct – need for detailed preparatory work in putting together the application for funding.

³ http://ec.europa.eu/avpolicy/docs/library/studies/art4_5/final_report.pdf page 114

We would also question whether the obligation of working with three different partners from three different countries should be a relevant criterion in the pre-production period. Indeed, contrary to film productions, partners are still quite reluctant to engage financially in a TV drama production from the beginning. But experience demonstrates that once the project is ready for distribution, it is easier to enter into partnership with foreign investors. Therefore a softer partnership obligation may be required to be able to put together a TV drama whose aim is to be distributed abroad.

To conclude, investment in content is not just in the interests of the TV industry. Content is a generator of economic activity in Europe and a key potential source of European economic advantage internationally – as Europe seeks to compete with the global internet players. Indeed, a vision of great ICT technologies with nothing original to show on them is not an attractive one for business, politicians, or for consumers. That is for all these reasons that producer-broadcasters represented by the Association of Commercial Television in Europe look forward to discussing further with the European Commission on the opportunity for them to integrate the future European Union MEDIA Programme.

ACT, 30 November 2010