ACT QUESTIONS COMPATIBILITY OF GREEK TAX ON COMMERCIAL BROADCASTERS WITH EU LAW

Brussels, 8 September 2010 – Today the Association of Commercial Television in Europe (www.acte.be) sent a letter to the European Commission to formally request that the compatibility with European law of the newly introduced tax of 20% on commercial broadcasters in Greece be considered as a matter of urgency. This tax has been proposed by the Greek Government as part of the package of measures introduced to bring increased stability to public finances in Greece. This additional tax, which is supposed to enter into force on 1 October 2010 and is imposed on TV advertising revenues, not on profits - results in a burden on TV advertisement revenues which is unique in Europe. Taking into account 23% VAT and an additional tax of 21, 5% for the advertising business to be paid into journalists' pension funds, the overall taxation of television advertising is at 64, 5% - before corporate income tax.

Commenting on the tax in Greece, Ross Biggam, Director General ACT, said: "The tax imposes a significant and additional burden on commercial broadcasters in Greece, which threaten the long-term sustainability of our sector and endangers its survival in economically critical times. We believe that the tax raises a number of issues, which relate to the compatibility of the tax with the EU Treaty, the EU digital policy, with European state aid rules and existing EU legislation in place such as Council Decision 9443/10 on requirements for Greece to take measures for its deficit reduction and the New Regulatory Framework for Electronic Communications. We firmly believe that a number of formal notifications may be needed".

<u>The main arguments are the following:</u>

- **Digital Switchover endangered:** All Member States are encouraged to end analogue terrestrial transmissions by 2010. Greece has recently adopted a strategy for switching off analogue terrestrial TV by 2012. Yet this is an expensive exercise for broadcasters, requiring multi-million euro investment in licences, technology and content. There is a risk that the objective laid down in the EU's Digital Agenda to reach digital switchover by 2012 will be prejudiced by the unexpected imposition of the new tax.

- **Technological neutrality not respected:** The imposition of this tax on television advertising, but the non-imposition of a proposed parallel tax on internet advertising, is a clear discrimination between competing media.

- **Barrier to the freedom to provide services:** It is clear that the tax would also apply to non-Greek operators of broadcasting and advertising services active in Greece, i.e., that it is able to affect trade between Member States. While the ACT questions the proportionality of this measure – introducing an overall tax of 64.5% before corporate tax – this measure should also be examined as a potential barrier to entry to the Greek market for multinational advertisers.

- **Tax having adverse effect on Greece's recovery programme:** The ACT questions whether the new tax, which discriminates against precisely the medium with the highest level of reinvestment of its advertising revenue back into the local economy, can be squared with the commitment enshrined in Council Decision 9443/10 to boost the competitiveness of the Greek economy.

- **Hidden state aid and competitive advantage for public broadcasters:** A 20% special tax on the income of advertising revenues gives an advantage to public broadcasters who – relative to the commercial competition – will have an improved financial situation. In the absence of any corresponding measures to reduce the income of the public broadcaster in Greece, this improvement in the relative position of the state broadcaster could be construed as over-compensation, as its resources may now exceed that which is necessary to deliver its public service mission

Against this background the ACT and the Greek Union of Broadcasters consider **three notifications necessary**: Firstly, a state aid notification, which may be required in the event that the tax will be considered as a hidden state aid. Secondly, the EU Transparency Directive requires Member States to communicate to the Commission all new draft technical regulations. This Directive has been extended to regulations relating to information society services. In the light of today's converged media landscape, many actual or potential Greek services would be understood as "information society services" and would thus be affected by this tax. A notification should therefore be required. Finally, the new tax on TV advertising must be seen as a reaction to the Greek deficit crises and Greece is obliged to refer to this tax in their report to the Commission on fulfilling Council Decision 9443/10.

Speaking as ACT Vice-President and behalf of an affected Greek member company, Director General Antenna Group Spilios Charamis said: "Speaking as ACT Vice-President and as CEO of an affected Greek member company, I believe that, notwithstanding the unprecedented budgetary pressures on Greek public finances, the introduction of this new tax will prove not only to be counter-productive on the Greek industry but also that it runs contrary to many important European policies. Furthermore, it raises questions as to its compatibility with the letter or spirit of a number of provisions of EU law".

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About the ACT:

The Association of Commercial Television in Europe (ACT) represents the interests of the commercial broadcasting sector in Europe. Formed in 1989, the ACT has twenty-nine member companies active in 34 European countries. 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. www.acte.be

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