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Request for Ofcom's opinion on jurisdiction over channels targeting Sweden

Dear Colleagues,

The Swedish Broadcasting Authority (SBA) has received a complaint from the temperance society IOGT-NTO, which demands that the SBA takes action to prevent alcohol advertising in broadcasts targeting Sweden. The channels identified in the complaint are all licensed in the United Kingdom: TV3, TV6, TV8 (Viasat Broadcasting UK Limited), Kanal 5 and Kanal 9 (SBS Broadcasting Networks Limited). Ofcom as well as the SBA and the Swedish Broadcasting Commission (SBC) consider the broadcasters to be established in the United Kingdom.

IOGT-NTO questions SBA/SBC:s opinion on jurisdiction and claims that SBA/SBC is obliged to review its opinion i.e. due to changes in the provisions regulating jurisdiction in the AVMS-Directive. IOGT-NTO specifically refers to Article 2 Section 3 a) which is now wider as it refers to "editorial decisions about *the audiovisual media service*" instead of "editorial decisions about *program schedules*".

The SBA believes that the new wording of Article 2 Section 3 a) was not primarily intended to alter how jurisdiction over broadcasts should be determined, but that it is rather a result of the wider scope of the AVMS-Directive, which also covers on-demand-services. We would however appreciate Ofcom's opinion on whether this revision or any other circumstances, including the information provided below, would give rise to doubt as regards which member state has jurisdiction.

TV3, TV6 and TV8

The company Viasat Broadcasting UK Limited is established in the UK and has been granted licenses by the British authorities to broadcast the Swedish language channels TV3, TV6 and TV8. These channels are wholly directed to Sweden. Programs and commercial communications are specifically targeting the public in Sweden. The channels are not available on any of the United Kingdom's broadcasting platforms and cannot be received in the UK on normal satellite or cable equipment.

Viasat Broadcasting UK Limited is owned by the Swedish company MTG Broadcasting AB and part of the Swedish group of companies Modern Times Group MTG AB. Viasat Broadcasting UK Limited owns the two Swedish companies TV3 AB and Televisionsaktiebolaget TV8 AB. The company Viasat Pay Channels AB - with the registered second company name "TV6 Sverige" - is owned directly by MTG Broadcasting AB. MTG Broadcasting AB is owned by Modern Times Group MTG AB through a line of subsidiaries.

The Swedish companies have reported the following as their business to the Swedish Company Register:

TV3 AB

The reported line of business is "Media – TV-program/planning", more specifically the company shall among other things direct or through ownership in other companies carry out business in the fields of transmission of information, telecommunication, production of TV- and radio programs.

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activity is classified to be "planning of TV-programs and broadcasts".

Televisionsaktiebolaget TV8 AB

The reported line of business is "Media – TV-program/planning", more specifically the company shall among other things direct or through ownership in other companies produce and distribute TV-programs intended for direct transmission to Scandinavian households.

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activity is classified to be "production of film, video and TV-programs".

Viasat Pay Channels AB - with the registered second company name "TV6 Sverige"

The reported line of business is "Media – TV-program/planning", more specifically the company shall among other things direct or through ownership in other companies carry out business in the fields of transmission of information, telecommunication, production of TV- and radio programs.

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activities is classified to be "planning of TV-programs and broadcast".

MTG Broadcasting AB

The reported line of business is "Bank, Finance and Insurance – holding activities/ non-financial group of companies", more specifically the company shall among other things direct or indirect through subsidiaries develop and sell products and services with in the areas of media-, information and communication".

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activity is classified to be "activities of holding companies".

MTG Broadcasting AB is owned by MTG Broadcasting Holding AB, which reported business is to direct or indirect through subsidiaries carry out TV-, video- and film production. MTG Broadcasting Holding AB is, in turn, owned by MTG Services AB via MTG Broadcasting SA. MTG Services AB administers financial activities within the group of companies. The owner of MTG Services AB, MTG Publishing AB, has reported that it's business is to carry out publishing, sales of advertising and TV-production, direct or indirect through subsidiaries. The company is directly owned by Modern Times Group MTG AB.

Modern Times Group MTG AB

The reported line of business is "Media – Film, Video and TV", more specifically the company shall among other things "develop and sell products and services within the areas of media- , information- and communication and business associated herewith.

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activity is classified to be "activities of head offices".

TV3, TV6 and TV8 all communicate to the public, in Swedish, through web-sites registered under the Swedish top-level domain ".se", www.tv3.se, www.tv6.se and www.tv8.se.

Prospective advertisers in TV3, TV6 and TV8 are referred to the website www.mtgtv.se, where information is given in Swedish and a range of regional Swedish sales offices are listed.

Kanal 5 and Kanal 9

The company SBS Broadcasting Networks Limited (SBS UK) is established in the UK and has been granted licenses by the British authorities to broadcast the

Swedish language channels Kanal 5 and Kanal 9. The channels are wholly directed to Sweden. Programs and commercial communications are specifically targeting the public in Sweden. The channels are not available on any of the United Kingdom's broadcasting platforms and cannot be received in the UK on normal satellite or cable equipment.

SBS Broadcasting Networks Limited is part of the ProSiebenSat1 group based in Germany. The Swedish company SBS TV AB (previously Kanal 5 AB) with the registered second company names "Kanal 5" and "Kanal 9" belongs to the same group of companies and is owned by the Dutch subsidiary P7S1 Broadcasting Europe BV (previously SBS Broadcasting Europe BV) via the Swedish company SBS TV Holding AB (previously Kanal 5 Holding AB).

SBS TV AB has reported to the Swedish Company Registry that its line of business is "Media – Film, Video and TV. More specifically the company has reported that it "shall carry out television services and business related thereto, however it may not act as a satellite broadcaster according to the Act (1992:1356) on satellite broadcasts of television programs to the public." (This Act was however repealed already in 1996).

According to the Swedish classification of economic activities, based on the European statistical classification of economic activities (NACE), the company's economic activities is classified to be "Production of film, video and TV-programs".

SBS TV AB has registered two second company names. According to the register "Kanal 5" is used for television services connected to the channel Kanal 5 and "Kanal 9" is used for television services connected to the channel Kanal 5.

SBS TV AB:s owner, SBS TV Holding AB, has reported to the Swedish Company Register that it shall carry out analogue and digital TV-broadcasts, directly or indirectly through subsidiaries.

Both Kanal 5 and Kanal 9 communicate to the public, in Swedish, through websites registered under the Swedish top-level domain ".se", www.kanal5.se and www.kanalnio.se.

Prospective advertisers in Kanal 5 and Kanal 9 are given information about audience penetration, prices and rate cards on www.kanal5.se/web/salj. The information is in Swedish and all sales personnel are stationed in Sweden.

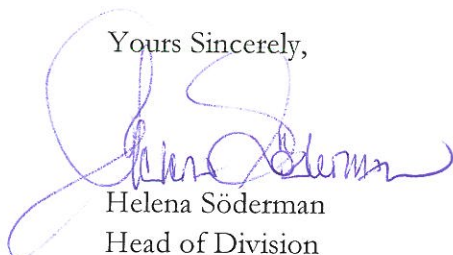
Cooperation under Article 4 of the AVMS-Directive

Sweden has a complete ban on alcohol advertising in television broadcasts. Product placement of alcoholic beverages is prohibited and manufacturers of alcoholic beverages may not be program sponsors. The Swedish legislator has considered these stricter rules of such general public interest that negligence may lead to adoption of appropriate measures even against broadcasters established in another member state in accordance with the procedure laid down in Article 4 of the AVMS-Directive.


In case the SBA/SBC:s current opinion on jurisdiction is not altered, IOGT-NTO has claimed that the SBA, on the basis of Article 4 of the AVMS-Directive, shall demand Ofcom to request the broadcasters to comply with the more stricter rules of general public interest in Sweden on alcohol advertising, sponsoring by alcohol manufacturers and product placement of alcohol.

The SBA may therefore have reasons to return to Ofcom with a formal request for cooperation under Article 4 of the AVMS-Directive.

Yours Sincerely,



Helena Söderman
Head of Division



Lottie-Ann Lindström
Legal Adviser