



2012-11-26

11/00567

Ofcom
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United Kingdom

Formal request for cooperation under Article 4(2) of the AVMS-Directive

Request according to Article 4(2)

In accordance with article 4(2) of the Audiovisual Media Services Directive, the Swedish Broadcasting Authority (SBA) issues the following request:

The SBA requests that Ofcom request

- the Swedish language TV channels TV3, TV6, TV8, licensed by Ofcom under Viasat Broadcasting UK Limited, and
- the Swedish language TV channels Kanal 5 and Kanal 9 licensed by Ofcom under SBS Broadcasting Networks Limited

to comply with the applicable parts¹ of the following Swedish rules of general public interest, as set out in the Swedish Radio and Television Broadcasting Act (SFS 2010:696) Chapter 7, section 2:

Programmes in television broadcasts, [Teletext or in on-demand TV] may not be sponsored by any party whose principal activity is the manufacture [or sale] of alcoholic beverages [or tobacco products].

and as set out in the Alcohol Act (SFS 2010:1622) Chapter 7, section 3:

Marketing of alcoholic beverages to consumers is not allowed in [radio- or] television-programmes [or on-demand TV]. This also applies to television broadcasts via satellite, subject to the Radio and Television Act.

¹ The text within brackets [] is not relevant in this context.

Grounds for the request

Sweden has a complete ban on alcohol advertising in television broadcasts and manufacturers of alcoholic beverages may not be program sponsors. The British rules are less strict and do under certain conditions allow alcohol advertising and manufacturers of alcoholic beverages may be program sponsors in television broadcasts. The Swedish legislator has considered the stricter Swedish 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.

Background

The 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 Swedish Broadcasting Commission (SBC) consider the broadcasts to fall under British jurisdiction. The result of two separate investigations, one conducted by IOGT-NTO and one conducted by the SBA, show that the broadcasting companies are broadcasting programmes in breach of the above mentioned rules.

Jurisdiction

The above mentioned broadcasting companies hold UK licenses issued by Ofcom.

The SBC has stated in a decision 2012-11-08 that it has found no reason to alter its previous view that the specified TV channels fall under British jurisdiction.

Other prerequisites according to the AVMS

a) Cross border element

The aforementioned TV channels owned by Viasat and SBS are, as concluded, subject to British jurisdiction. However, all of these TV channels are directed wholly or mostly towards Sweden meeting the conditions in Article 4(2)(b) and no. 42 of the directive's preamble.

This assumption is based on the following aspects:

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. Programmes 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. 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.mtg.tv.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. Programmes 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. Both Kanal 5 and Kanal 9 communicate to the public, in Swedish, through web-sites registered under the Swedish top-level domain ".se", www.kanal5.se and www.kanal9.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.

b. More detailed / stricter rules of general public interest

In carrying out the above mentioned prohibition against alcohol advertising and sponsorship in television broadcasts Sweden has exercised its freedom to adopt more detailed or stricter rules in the fields coordinated by the Directive as set out in Article 4(1) and (2)(a). The Swedish prohibitions against alcohol advertising and sponsorship are regarded in the Swedish legislation as rules of general public interest, meeting the requirement according to Article 4(2) (a) and no. 41 of the directive's preamble.

Yours Sincerely,

Magnus Larsson
Director General

Anna Dingertz
Legal Adviser

myndigheten för radio och tv



Enclosures:

1. SBA's audit concerning breaches of the Swedish rules about alcohol advertising and sponsoring
2. The SBC rule of 8th of November 20, 2012, regarding the jurisdiction over the broadcasts
3. The Swedish Radio and television Act, SFS No. 2010:696 [unofficial translation]