

Bilag 19: Ordlyd for garantierklæring

Garantierklæringen skal udformes således:

På foranledning af

(navn på tilladelsesindehaveren)
(adresse)
(postnummer)

”Tilladelsesindehaveren”

erklærer

(navn)
(adresse)
(postnummer)

”Pengeinstituttet”/”Forsikrings-selskabet”

ubetinget, uigenkaldeligt, på anfordring og uden nogen prøvelse eller øvrig dokumentation for kravets berettigelse at ville betale til

Den Danske Stat
V/Radio- og tv-nævnet
Mediesekretariatet
Vognmagergade 10, 1. sal
1120 København K

et beløb på kr. [], skriver [] *Her indsættes et beløb, der mindst svarer til den faste koncessionsafgift/ summen af de afdrag på tilladelsesprisen, som forfalder de følgende 36 måneder, d.v.s. et beløb, der mindst svarer til tre gange budsummen.*

Garantien tjener til skadesløs sikkerhed for ”Tilladelsesindehaverens” betaling af tilladelsesprisen for ”Tilladelsesindehaverens” tilladelse til [Landskanalen/Østkanalen/Vestkanalen], samt eventuelle andre krav i forbindelse med tilladelsen. Beløbet nedskrives som anført i § 11 i Bekendtgørelse nr. [] af 2. maj 2006 om Radio- og tv-nævnets udbud af den femte, landsdækkende FM-radiokanal.

Tilladelsesvilkårene kan ændres, uden at dette påvirker garantiens gyldighed.

Garantien er gældende fra garantiens udstedelse og udløber [] Her indsættes en dato, der ligger mindst 7 år efter programtilladelsens meddelelse. Den faste koncessionsafgift betales årligt forud, jf. bekendtgørelsens § 8, stk. 4, og vil forudsat rettidig betaling således være betalt fuldt ud på 7 års dagen for programtilladelsens meddelelse, hvorefter garantien vil kun frigives.

Den Danske Stat v/ Radio- og tv-nævnet, Mediesekretariatet, fremsætter eventuel betalingsanmodning under denne garanti ved brev til [”pengeinstituttet”/”forsikringsselskabet”], og inden 8 dage efter modtagelsen heraf skal det udbedte beløb være betalt. Betalingsanmodning kan senest fremsættes 3 måneder efter garantiens udløb. Er betalingsanmodning ikke fremsat inden da, skal Den Danske Stat tilbagelevere det originale garantidokument til ”pengeinstituttet”/”forsikringsselskabet”.

Såfremt betalingsanmodning ikke efterkommes, uanset grund er ”pengeinstituttet”/”forsikringsselskabet” forpligtet til at betale morarenter efter § 5 stk. 1, i lov om renter ved forsinket betaling mv. fra betalingsanmodningen til betaling sker.

”Tilladelsesindehaveren” erklærer ved sin underskrift på denne anfordringsgaranti, at ”Tilladelsesindehaveren” er uberettiget til at hindre en udbetaling af beløb under garantien, og at ”Tilladelsesindehaveren” ikke vil anvende foreløbige retsmidler, herunder forbud eller arrest for at forhindre udbetaling.

Denne garanti er undergivet dansk ret og har aftalt værneting ved Østre Landsret.

[Ved udenlandsk pengeinstitut/forsikringsselskab:] Undertegnede pengeinstitut/forsikringsselskab erklærer, at en dansk retsafgørelse har direkte eksigibel virkning overfor pengeinstituttet/forsikringsselskabet.

Dato:

Underskrift:

[Pengeinstitut/Forsikringsselskab]:

Dato:

Underskrift:

[Tilladelsesindehaver]:

EPRA: Questionnaire
Plenary session 2: Must-Carry rules: Valuable Tool or Sacred Cow?

Dear EPRA Members

The following is a short questionnaire on the issue of "must-carry", and is intended to support the preparation of the second plenary of the EPRA meeting in Riga. We would be very grateful to receive your responses to this questionnaire by Monday April 21st 2008. Please forward your responses to Deirdre Kevin: info@deirdrekevin.com
Thank you very much in advance for your cooperation in this matter.

Deirdre Kevin

Reply from DENMARK: (Erik Nordahl Svendsen)

Must-Carry and Must-Offer

"Must-carry" obligations imply that service providers must carry certain channels and/or content.

"Must-offer" rules (implemented in some jurisdictions), whereby specific broadcasters must offer their channels for retransmission on certain platforms.

A Regulations in media / broadcasting regulation

Are there specific must-carry rules in the media/broadcasting law in your jurisdiction? Yes No
If yes, please cite legal reference/references:

Promulgation of the Radio and Television Broadcasting Act
Consolidated Act no. 338 of 11/04/2007

Article 6. Owners of communal aerial installations shall ensure that the sound and television programmes

broadcast by means of radio equipment by DR, TV 2/DANMARK A/S and the regional TV 2 stations, cf. Sections 12, 31 and 38 a, [referring to public service channels from the said institutions, erik ns.] including the regional programmes intended for reception in the area concerned, are distributed via the installations. This also applies to programmes on the fourth FM radio channel, cf. Section 11 (3).

(2) The provision in subsection (1) does not apply to DR's children's and history channel.

(3) Digital programmes broadcast by DR and TV 2/DANMARK shall only be distributed if other digital programmes are distributed in the installation.

(4) The Minister for Culture may lay down rules concerning the extent to which programmes on the fifth FM radio channel, cf. Section 11 (5), shall be distributed via communal aerial installations.

(5) Should the installation distribute programmes in programme packages,

1) all such packages shall contain the programmes covered by subsections (1), (3) and (4), and

2) an option shall be provided solely to purchase a package that either only contains the programmes stated in subsections (1), (3) and (4), or that only contains these programmes and other programmes for which the price is so low that the price of these supplementary programmes only constitutes a fraction of the total price of the package.

B Regulatory aims

What are the main regulatory aims of these rules?

To ensure a diverse offer of content?

To ensure access for all to PSB channels?

To ensure market diversity and promote presence of smaller broadcasting organisations?

To promote new services?

Are there other aims, please summarise:.....

C Relating to which platforms

Which platforms are subject to must-carry obligations?

- Analogue cable x
- Digital cable x
- Analogue terrestrial x
- Digital terrestrial x
- Satellite no
- IPTV x
- Mobile broadcasting 3G networks no
- Mobile broadcasting DVBH x (Boxer starts DVB-H on

one MUX in 2010, 15 % of the capacity shall be given to DR)

The European Union Universal Service Directive 2003 (Article 31) allows for obligations to be placed on networks where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts.

Do the rules specify how to define where a network has or has not a "significant number of end users"?
No

Are must-carry obligations imposed on the network operator (yes: cable) and/or the distributor of channels (yes: DTT-gatekeeper)?

Are must-carry obligations imposed on providers of conditional access systems (CAS) and other facilities?
No

D Types of must-carry content

Do the obligations specifically mention specific channels rather than content?

- Public service channels? x
 - Channels with public service obligations? X (FM 4 and FM 5)
 - Commercial channels? no
 - Teleshopping channels? no
 - Local regional channels? X (TV 2 Regions = PSB),
- and the private DTT-gatekeeper (Boxer) must carry a channel with local news in 7 regions, if such a channel exist (it does!!)
- Minority channels? no
 - Foreign channels? X Boxer must carry at least
- one channel from neighbouring countries (Norway, Sweden, Germany), it shall be a "broad" channel, psb or commercial. It may be different channels in different parts of Denmark.

Are there other channel types?, please summarise:.....

If the rules are specific, which types of content are addressed in must-carry obligations?, for example:

- Local information / news
- Cultural information
- Accessibility services (e.g. for disabled viewers) The psb-gatekeeper (Digi-TV) must carry simultaneous sign language translation of the main news on DR 1, DR 2 and TV 2 (that is: from 17:00-20:00)
- Complementary services (e.g. teletext etc.)

Are there other content types?, please summarise:.....

On it's 3 MUX's Boxer has promised 29 channels. The composition of channels must secure minimum 50 % of programtime to entertainment, sports, music, news, popular science, and minimum 5 % of time to each of the five categories. – So its not "must carry" of channels but "must bring programme types"

Are there any obligations regarding enhanced quality services (e.g. does the must carry obligation also cover High Definition (HDTV) broadcasts of public channels)? Yes No

E Alternative/ complementary approaches

Does your jurisdiction have must-offer rules? Yes No
 If YES, In relation to which types of broadcasting services?
 And regarding which types of platforms?.....

EPRA: Questionnaire
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Are there other obligations placed on service operators concerning giving access on their platforms to particular content or programming? Yes No

F Role of the regulator and methods of implementation

Are there must-carry rules in authorisations for service providers: cable operators, satellite operators, multiplex operators, DTT network operators (**se about Boxer under D**), and IPTV service providers? Yes No

Are there must-offer rules in the licence agreements with broadcasters? Yes No X (or only in the sense, that the right of "must carry" is mentioned in the license. For instance for FM 5, and therefore the station can not be a paychannel in cable.)

Are content types specified in the legislation, or does the regulator decide on must-carry content and channels based on general principles regarding the general interest?.....
...All regulations of must carry are done in law or by ministerial order. The Board of Radio and TV can not decide on it.
.....

Are there regular reviews of the must-carry regime? Yes No x

Or have rules been updated in the development of new legislation addressing the digital media environment? Yes No

What role does your regulatory authority play in the review of must-carry rules? Not relevant

G Legal challenges, problems of application and other issues

Are there any examples of legal challenges to the must-carry regimes in your jurisdiction at the national or European level? (e.g. *in relation to competition issues between channels, or concerning the obligation to transmit channels already available on other platforms*)

Please outline briefly:.....DR is having more digital channels both DAB and DTT, it is not clear when a new channel shall have must carry status. New legislation is expected.....
.....

Are there any examples of problems in the application of the rules in relation to new media platforms such as IPTV or mobile broadcasting?

Please outline briefly:.....Boxer must give 15 % of capacity on DVB-H to DR (see C above).....
.....

Are there any proposals/discussions aiming at replacing must-carry with a new concept, e.g. the creation of "universal service obligations with regard to content"?

Please outline briefly:Not to my knowledge.....
.....

Please add any other information that you consider to be of interest:
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.....
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