Hungary

Hungarian Government Spending on advertisements in the print, online and TV media

State aid Complaint to the European Commission

By

Magyar Hang (Hungarian Voice)

and

[redacted]

1) Introduction to the Complaint

1. This is a State aid Complaint ("**the Complaint**" or "**this Complaint**") against Hungary. The Complaint demonstrates conclusively that Hungary (under successive administrations since 1998) has consistently conferred State aid in a selective manner on Government-aligned media outlets[1] in a way that distorts competition and affects trade between Member States. This aid has been substantial, amounting to hundreds of millions of Euros of state advertising expenditures. For the period 2015 - 2023, it is estimated that the total amount of state aid for newspapers, online media and TV amounts to **EUR 828,221,400** (**EUR 1,117,097,500** including interest).

2. All Governments in the EU – and indeed across the world – purchase advertising space in an effort to promote Government initiatives. Advertising contracts are concluded with a broad

[1] We define "Government-aligned" media as having one or more features below:

- **Personal links** between (i) the owner or editorial management of a media outlet and (ii) the Government. For example, Mr Lajos Simicska (a college roommate of the prime minister Viktor Orbán, and subsequently the treasurer of Viktor Orban's party Fidesz) owned the majority of the conservative media prior to 2015. Another example is the ownership of Hir TV by Mr Zsolt Nyerges, who is widely considered as one of the most influential oligarchs aligned with the Hungarian Government. https://english.atlatszo.hu/2012/11/14/oligarchopedia-zsolt-nyerges/ https://europeanjournalists.org/blog/2018/08/07/hungary-hir-tv-news-channel-taken-over-by-the-Government/

- **Ownership / capital links** between (i) the media outlet and (ii) the Government (for example, a media outlet in which a direct or indirect ownership stake can be traced to a person holding a position in the Government.

  For example, Andrew G. Vajna, the Government commissioner in charge of the film industry from 2011 until his death in 2019, bought the Hungarian TV2 Group, the country's second-biggest commercial channel, in 2015. From 2016 onwards, he also owned the Rádió 1 radio station. In 2017, he bought Lapcom Zrt. which includes the tabloid Bors, and the regional dailies Délmagyarország and Kisalföld. https://atlatszo.hu/kozpenz/2018/10/17/mar-csaknem-400-ceg-kotheto-meszaros-lorinchez-garancsi-istvanhoz-es-andy-vajnahoz/

- Persistent, uncritical line of commentary towards the Government https://english.atlatszo.hu/2018/09/29/a-case-study-in-hungarian-propaganda-this-is-how-the-pro-Government-media-works-if-something-awkward-is-revealed-about-pm-orban/; https://444.hu/tldr/2022/02/28/the-art-of-media-war-this-is-how-viktor-orban-captured-the-free-press-in-hungary

We also adopt a broad definition of the Government, which includes the Government and public authorities (at all levels, including both central and regional), as well as public and private entities whose actions can be imputed to the Government. The definition therefore also captures state-owned entities in Hungary, most notably the **National Lottery, MVM Energy Company, the Hungarian Development Bank, Hungarian Tourism Agency and the Student Loan Centre.**

range of media outlets from TV, radio, print media and billboards to the more novel methods of reaching audiences through display ads. Therefore, EU Member State Governments are in principle free to decide how much they wish to spend on advertisement, and what the purpose of their advertisement campaigns should be. However, when the actions of Government materially deviate from the way that a market-based actor would allocate advertising funds (as is the case here), the Member State in question is, in fact, conferring unlawful (and potentially incompatible) State aid.

3. The fundamental State aid principle is set out by the Court of Justice in *Stardust Marine* C-482/99[2]:

> *"[23] It is settled case-law that **no distinction is to be drawn between cases where the aid is granted directly by the State and those where it is granted by public or private bodies which the State establishes or designates with a view to administering the aid** (see, in particular, Case 78/76 Steinike & Weinlig v Germany [1977] ECR 595, paragraph 21; Case 290/83 Commission v France [1985] ECR 439, paragraph 14; Joined Cases 67/85, 68/85 and 70/85 Van der Kooy and Others v Commission [1988] ECR 219, paragraph 35; and Case C-305/89 Italy v Commission [1991] ECR I-1603, paragraph 13). Community law cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid.*
>
> *[…]*
>
> *[70] Therefore, **in accordance with equally settled case-law, it is necessary to assess whether, in similar circumstances, a private investor of a dimension comparable to that of the bodies managing the public sector could have been prevailed upon to make capital contributions of the same size** (Case C-261/89 Italy v Commission [1991] ECR I-4437, paragraph 8; Joined Cases C-278/92 to C-280/92 Spain v Commission, cited above, paragraph 21; Case C-42/93 Spain v Commission [1994] ECR I-4175, paragraph 13), having regard in particular to the information available and foreseeable developments at the date of those contributions."*

4. Although Stardust Marine relates to State investments and capital contributions, **the same principle applies here**: Any private investor would be seeking a "market return" from the advertising expenditure based generally on audience (or eyeballs). It is therefore necessary to assess, in the words of Stardust Marine, ***whether, in similar circumstances, a private advertiser of a dimension comparable to that of the bodies managing the State advertising could have been prevailed upon to place advertising in the same way***.

5. On the basis that an EU Member State is free to determine the total volume of State advertising, the market economy counterfactual has to be as follows: For any given amount of State advertising the market economy counterfactual ("**the Counterfactual**") is for that advertising to be **placed in accordance with the way that a private advertiser would place such advertising**. Any deviation from that Counterfactual would then need to be examined based on the State aid rules. The Counterfactual can also be used to determine the amount of aid and any potential recovery.

6. The attached Economic Study ("**the Economic Study**", "**the Economic Report"**) by the former DG Competition Chief Economist Professor Kai-Uwe Kühn demonstrates that private media generally allocate advertising proportionally to the audience reached, and independently from the political alignment of the media company. It thus grows proportionally to audience over

---

[2] European Court reports 2002 Page I-04397, https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-482/99&jur=C

time and is approximately distributed among any group of media outlets according to the audience shares in that group. This is the behaviour that corresponds to a market economy operator and is thus the relevant benchmark for determining whether there is state aid.

7. Advertising by the Hungarian Government and state-owned Hungarian enterprises has differed from this pattern of a market allocation of advertising by selectively favouring Government-aligned media, thus conveying a selective advantage on media that have owners and/or editors that tend to publish views aligned directly with Government positions. State advertising in Hungary has thus included State aid by using State funds to confer an unlawful and selective financial advantage to certain media outlets.

8. As Professor Kühn puts it at paragraph 20 of the Economic Study:

> *"the complaint alleges that the Government favoured certain media companies whose owners political position supported the political position of the Government. It is alleged that the Government coordinated advertising across different Government agencies and Government enterprises to selectively support Government-aligned media financially, and induce the exit of Government critical media from the market. Subsidies would generate this outcome if media companies not supportive of the Government would either exit the market because they became financially too weak or by encouraging Government-aligned entrepreneurs to purchase media enterprises that were not Government-aligned by rewarding such transactions through state aid via high advertising payments. Such granting of state aid would clearly distort competition between media outlets with different political positioning"*

9. The evidence and data show beyond doubt that, over successive Hungarian administrations, the Hungarian Government has consistently favoured Government-aligned media outlets in the purchase of advertising, thereby conveying a selective advantage on such media compared to the Counterfactual. Moreover, the advertising patterns uncovered by Professor Kühn indicate that the businesses aligned with the Government were rewarded through Government advertising for purchasing specific media outlets, which then became Government-aligned. The Hungarian state has therefore granted State aid within the meaning of Article 107 (1) TFEU.

10. This Complaint and the Economic Study demonstrate in detail that the legal standard for the existence of unlawful and ultimately incompatible State aid is met. In particular, the two fundamental requirements for a finding of State Aid under Article 107 (1) TFEU are:

    a) **imputability of the measure to the State**
    b) financing of the measure through **State resources**

11. On the facts, there are two elements that the Hungarian authorities could attempt to invoke to challenge imputability:

    a) first, a significant proportion of Government funding has come via state-owned Hungarian enterprises, rather than directly from the Government;

    b) second, since 2014, Government advertising has been placed through intermediaries (private advertising agencies), rather than by the Government directly.

12. Neither of these two elements removes Government control over the placement of advertisement.

13. The incentives of private advertising agencies as well as the advertising outcomes - which show a high degree of coordination in advertising policies across Government agencies and Government-owned firms - demonstrate this fact. As the Economic Report concludes, it appears impossible that the alignment between the advertising patterns by Government agencies and Government-owned enterprises could have occurred without coordination by the Government. These patterns imply a degree of coordination by the Government that in turn implies imputability.

14. Moreover, the private advertising agencies who are acting as intermediaries for the government do not carry any best-value obligation. As Professor Kühn explains, the auctioning off of placing advertising portfolios in the market can never lead to advertising companies being residual claimants. This is because the benefits from placing an advertisement always go entirely to the party that hires the advertising agency, namely the Government or the Government-owned enterprise, even if the mechanism for hiring the advertising agency is an auction. The winner of the auction does not receive the benefits from advertising, which arises from the reactions of media audiences. The advertising agency thus is not a residual claimant of the benefits of the advertising transaction as a private advertiser would be.

15. In addition, these private advertising agencies were appointed using procedures that are suspect under the 2014 EU Public Procurement Directive. Private advertising agencies close to the Government have been the primary beneficiaries of communication procurement tenders since 2015 and have been selected for specific media advertising contracts without facing competition from any other bidders. Furthermore, it was not the contracting for advertisements itself that was procured in the tender – at best it was the intermediation service (without best-value obligation).

16. We also show the clear existence of a selective **advantage,** and present conclusions from Professor's Kühn data analysis, showing that the distribution of Hungarian Government advertising did not follow that of private advertising – exclusively for newspapers, TV and online media that have been Government-aligned. For non-Government-aligned media, the growth path of Government advertising is the same as for private advertising.

2) Introduction to the Complainants

17. The Complainants, Magyar Hang (Hungarian Voice)[3] and [redacted],[4] have the requisite standing to bring this Complaint.

18. Magyar Hang is a weekly newspaper and news website that was founded by journalists who lost their jobs when one day after the 2018 elections, Magyar Nemzet, the most widely-read political daily in Hungary, was shut down by its owner. Magyar Hang, which is independent of Government, has since become the second-most widely read weekly in the country. The Magyar Hang news website, hang.hu, has an average of 700 thousand unique visitors a month. Magyar Hang's YouTube videos are watched by 1,5 million people on a monthly average.

19. The journalists of Magyar Hang are not allowed to attend Hungarian Government press conferences, their questions are left unanswered by the ruling party and the ministries, and their interview requests are denied by Government officials. Magyar Hang could not find a

[3] https://hang.hu/informacio/helpussurvive-143354

[4] [redacted]

printing house in Hungary willing to sign a contract with it, so its newspaper is produced in Bratislava, Slovakia.

20. [redacted]

21. [redacted]

3) Timeline of Government intervention in the Hungarian media

22. To understand the economic evidence on selective support for Government-aligned media, we first have to identify the relevant time periods in which different Hungarian Administrations were active. Although our Complaint and the request for recovery targets the time period between 2015 and 2023, our analysis goes back to 1994. We can show that before the first FIDESZ Government, there the expected proportionality of private and Government advertising prevailed. After 1998 there was a persistent practice of the state favouring Government-aligned media over the whole time horizon until 2023. This shows the urgency of bringing this practice to an end:

- 16 July 1994 – 6 July 1998: MSZP, SZDSZ ("Horn")
- **6 July 1998 – 27 May 2002: Fidesz, FKgP, MDF ("Fidesz Coalition I", "Fidesz I")**
- 27 May 2002 – 29 September 2004: MSZP, SZDSZ ("Medgyessy")
- 29 September 2004 – 9 June 2006: MSZP, SZDSZ ("Gyurcsány I")
- 9 June 2006 – 14 April 2009: MSZP, SZDSZ ("Gyurcsány II")
- 14 April 2009 – 29 May 2010: MSZP ("Bajnai")
- **29 May 2010 – 6 June 2014: Fidesz, KDNP ("Fidesz II")**
- **6 June 2014 – 18 May 2018: Fidesz, KDNP ("Fidesz III")**
- **18 May 2018 – 24 May 2022: Fidesz, KDNP ("Fidesz IV")**
- **24 May 2022 – present ("Fidesz V")**

23. In so far as this Complaint relates to events documented in the Economic Study, it will refer to periods of Government according to the definitions set out in the above paragraph.

24. To show the intended selectivity of aid to media companies one needs to demonstrate that Government advertising patterns deviate from private advertising patterns only to the extent that disproportionate government advertising is granted to Government-aligned media outlets. This can be demonstrated by showing that government advertising patterns at a media outlet change when either the political orientation of the government changes, or where for a given government, the political-alignment of a media outlet changes due to an ownership change. In early periods from 2004 and 2015, the Economic Study observes primarily changes in the political orientation of the Government that allows the Economic Study to determine these effects, because the political orientation of the media companies mostly stay the same. From the beginning of the FIDESZ II government, the Economic Study can detect state aid primarily from changes in the political alignment of the owner of a media outlet, while the government remains unchanged.

25. A crucial change of alignment in the later time period was the event we will refer to as "**the 2015 Dispute**": In 2015 there was a fundamental dispute between the Prime Minster Victor Orbán and his (up to then) close ally Lajos Simicska who controlled Magyar Nemzet and Metropol, the leading newspapers in Hungary. This dispute led to an immediate major change in Government advertising policies.

26. Government advertising funding for the Simicska newspapers was stopped immediately. Thereafter, allies of the incumbent Government rapidly and systematically bought up previously non-Government-aligned newspapers, which subsequently received very large advertisement payments. This process culminated in the founding of KESMA in 2018 (the "**Media Consolidation**"), which consolidated ownership of the majority of Government-aligned media. Eventually the Government-aligned media conglomerate KESMA controlled all types of media outlets with its share of newspaper readership reaching almost 80%.

4) Legal and political context

27. In the following paragraphs, we provide a brief account of the key political and legal events in Hungary relating to state advertising. This context is crucial to understand why imputability of the financial support to the state cannot be in doubt in this case.

28. Originally, the liberal Fidesz party was one of the favourites of the left-wing and liberal press outlets - but as a result of the ascent of Viktor Orbán from 1993 onwards, the previously sympathetic press began to turn against Fidesz. Following his election victory in 1998 (Fidesz Coalition I), Orbán espoused the view that "*the "left-liberal dominance" in the media, along with the underlying structural and business conditions that made it possible, must be broken, while at the same time the pro-Government/conservative segment of society must create its own media.*"[5]

29. Under the Fidesz Coalition I, the allocation of state resources shifted towards business people aligned with the governing Fidesz-KDNP party alliance. In particular, during Fidesz I, state funds were directed to the media outlets owned by Lajos Simicska, thus primarily favouring Fidesz's most influential ally. However, Fidesz was defeated in the 2002 election. Orbán attributed the electoral defeat to the presumed persistence of the "left-liberal media dominance" and their anti-Government coverage.[6]

30. Although the 2002 defeat slowed down the advertising allocations initiated under Fidesz Coalition I, the practice was not discontinued under the Socialist and Free Democrat coalitions of Medgyessy, Gyurcsány I and II, as well as Bajnai. As evidenced by the Economic Report, Government advertising patterns in Simicska newspapers (initiated by Fidesz Coalition I) did not fully re-align with private advertising patterns under Medgyessy, Gyurcsány I and II, as well as Bajnai.

31. Following its victory in 2010, Fidesz II continued the efforts to restructure and transform the media market in Hungary. In addition to the selective use of state funding, targeted and discriminatory state regulation was deployed to expand the influence of pro-Government media. Acquisitions of the remaining independent media companies also accelerated.[7]

32. Beginning 2011, new advertising agencies with ties to Fidesz started to enter communication and media acquisition tenders.[8] This is further explained in Section 13 of this Complaint.

---

[5] State advertising as an instrument of transformation of the media market in Hungary, Attila Batorfy et al, 7 September 2019 https://www.tandfonline.com/doi/full/10.1080/21599165.2019.1662398#d1e129

[6] Bátorfy, A., & Urbán, Á. (2019). State advertising as an instrument of transformation of the media market in Hungary. *East European Politics*, *36*(1), 44–65. https://doi.org/10.1080/21599165.2019.1662398

[7] These changes in the media ownership are thoroughly covered by a large number of investigative journalist articles analysed by academic papers and several EC and EU reports expressing serious concerns about the shrinking space for independent journalism in Hungary. https://atlo.team/media2020/
https://kreativ.hu/cikk/how_did_the_orban_simicska_media_empire_function;
https://ipi.media/one-hungarian-media-monster-to-rule-them-al

[8] https://kreativ.hu/cikk/how_did_the_orban_simicska_media_empire_function;

33. The 2015 Dispute (described above) accelerated the measures Fidesz undertook to consolidate media markets in the hands of government-aligned owners. In particular, Fidesz redirected its efforts towards funding and ensuring the profitability of the new media empire that would replace Lajos Simicska.[9]

34. In December 2018, the Government adopted decree no. 229/2018. The decree declared the creation of a media conglomerate Central European Press Media Foundation (**KESMA in Hungarian**) to be of national strategic importance in the public interest, thereby calling for exempting the merger affecting hundreds of broadcast, online and print publications from competition rules. The merger comprised a foundation (**KESMA**) to which 10 media owners donated their media outlets, resulting in the control and operation of nearly 480 publications. The donations to KESMA came from several media owners, all of whom had close ties to Fidesz.[10] The control of KESMA lies in the hands of Gabor Liszkay who is Orbán's most trusted man in media matters.[11] The Government exempted the transaction from merger control by declaring it to be strategic and in the national interest.

35. To understand the relevance of this Government decree and the creation of KESMA for the current Complaint, we briefly set out the relevant legal framework. According to the Hungarian Competition Act[12], transactions meeting the definition of a concentration and triggering relevant thresholds must be notified to the national competition authority (Gazdasági Versenyhivatal - GVH). The competition authority must then obtain the opinion of the Media Council in cases when the concentration concerns enterprises with editorial responsibility and the primary objective of which is to distribute media content to the public via an electronic communications network or a printed press product.[13]

36. In November 2013, the Hungarian Parliament amended the Competition Act[14]. The new law introduced a new provision[15] under which "*the Government may, in the public interest, in particular, to preserve jobs and to assure the security of supply, declare a concentration of undertakings to be of strategic importance at the national level*". For these types of concentrations, no authorization of the Competition Authority (GVH) is required. In addition, the decision can be made through a Government decree without proper reasoning, and which is not subject to judicial review. Since 2013, a high number of mergers, including media, energy, finance and telecommunications were approved by the Government without having the GVH assess the merger's impact on competition. [16]

37. In June 2020, the Constitutional Court rejected[17] an application by a quarter of members of parliament challenging the Government Decree, finding that it rests solely and exclusively within the Government's prerogative to determine matters of "strategic national importance"

---

[9] *Ibid*

[10] https://ipi.media/the-rise-of-kesma-how-orbans-allies-bought-up-hungarys-media/

[11] https://ipi.media/one-hungarian-media-monster-to-rule-them-all/

[12] Article 24 of the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter: Competition Act), link: https://www.gvh.hu/pfile/file?path=/en/legal_background/rules_for_the_hungarian_market/competition_act/competition-act-documents/jogihatter_tpvt_hataly_20190101_a&inline=true

[13] Article 171 of the Hungarian Media Act

[14] Act CCI of 2013 on the amendment of Hungarian Competition Act and of other acts concerning the proceedings of the Hungarian Competition Authority Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, link: https://www.gvh.hu/pfile/file?path=/en/legal_background/jogihatter_tpvt_hataly_20190101_a.pdf1&inline=true

[15] Article 24 of the Competition Act.

[16] Since 2013, **39** transactions were approved by the Government without having the Hungarian Competition Authority analysing them on the basis of their impact on competition. For comparison, in Germany since the ministerial authorization procedure was inserted in the German competition law in 1970, there has been 23 applications for ministerial approval, and only nine of those were positively granted. OECD, Public interest considerations in merger control, DAF/COMP/WP3(2016)3,p.15

[17] Decision of the Constitutional Court no. II/313/2019 (2/2020), link: https://alkotmanybirosag.hu/uploads/2020/06/sz_ii_313_2019-.pdf

and that "nothing in the merger could be read as necessarily threatening media pluralism in the country".[18]

5) Evidence: Introduction to how the data was obtained and analysed

38. For the Economic Study, Professor Kühn relied on several data sets.

39. Advertising data from Kantar (https://www.kantar.com/) covering the years 1994 to 2023 for all media channels is used for tracking the expenditure of advertisers for a large range of media outlets in Hungary. The sample includes information that identifies the advertiser as the Government, a Government-owned enterprise, or a private company.

40. For print media and online media, Professor Kühn has collected audience data from Matesz (https://matesz.hu/) (for newspapers) and eGemius (https://gemius.com/) (for online platforms). Professor Kühn has attempted to match this data with Kantar's data on advertising by newspaper title. This was possible for newspapers, where Professor Kühn was able to match advertising and readership data to show the proportionality between audience size and volume of private advertising for newspapers.

41. However, for online media the advertising data from Kantar is available only by groups of online platforms under the same ownership, while the audience data (MAU) from eGemius is available only at the platform level. Since it is difficult to identify the mapping between platforms covered in the audience data set with the portfolio of properties for which Kantar has advertising data, Professor Kühn was not able to demonstrate the relationship between private advertising and audience size for online media. Similarly, Professor Kühn was unable to show this relationship for TV, for which audience data would have only been available at a very high cost.

42. However, conceptually the right benchmark for Government advertising is not the size of the audience per se, but the actual way private advertisers allocate their spend. This comparison is the right benchmark for identifying state aid because the test for state aid is whether the Government advertising policy is consistent with that of a market economy operator.

6) Market-based advertising share should follow private advertising share

43. As the Economic Study demonstrates, state aid is detected when the Government allocates a resource in a distorted manner, i.e. it deviates from how a private company would have allocated that resource in equivalent circumstances. This means that the Government's purchase and pricing decisions must be compared to those of a private company working in a market environment.

44. Successive Hungarian Governments (at least since 1998) have favoured certain media enterprises over others in the sense of allocating a higher share of advertising expenses to them and thus selectively supported these enterprises financially.

45. In order to prove this claim – Professor Kühn observes - the challenge is to identify the evidence that distinguishes state aid with distortionary effects, from legitimate advertising by the state. A state (including state-owned enterprises) must clearly be free to act as a normal

[18] The decision of the Constitutional Court has been strongly criticized in legal scholarship, ános Fazekas: A kormányzati tevékenység bírói kontrollja (Judicial review of Governmental action), ORAC kiadó, Budapest, 2023, p. 110.

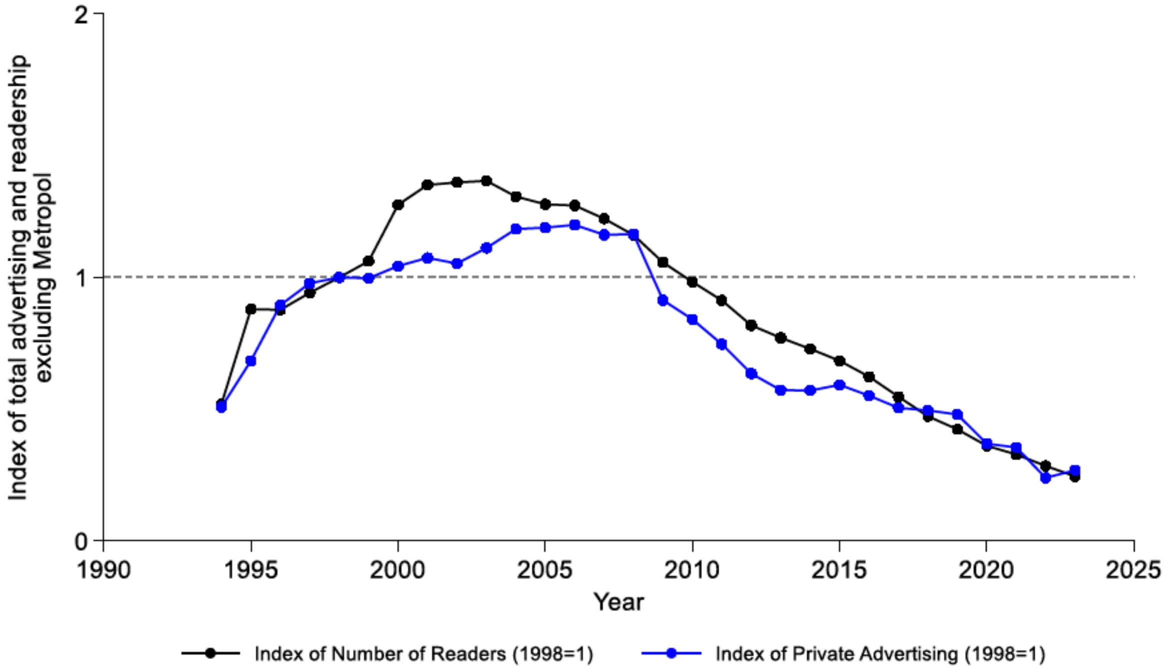
participant in the advertising market. However, state aid is clearly present when advertising is allocated to favour some media companies over others, without this being justified by enhanced effectiveness of the advertising campaign. This is what state aid law labels as "selectivity". In other words, state aid is present when advertising is not allocated by the Government in the same way a private firm would, namely, to achieve the highest return from advertising spending.

46. The central issue for demonstrating that there is state aid is thus to find patterns in the data that are not consistent with the Government behaving like a private advertiser would. This means that the patterns of private advertisements must be taken as a benchmark for Government advertisement. This follows the same type of benchmarking exercise that has been consistently applied in the European state aid practice and policy to other forms of state aid, for example the granting of state aid through financial instruments

47. Since the audience of a media outlet is an indicator for the profitability of advertising in that outlet, it should be expected that advertising expenditures for a media outlet would be approximately proportional to the audience of media outlets in a given market in which audience is measured across media outlets in a consistent way - like political/economic newspapers, websites covering political and economic news, or politics related programming on radio and television stations. In contrast, Professor Kühn shows that there are no conceivable circumstances in which a private advertiser would increase advertising intensity at given audience size just because the political views of the owner (or editor) of the newspaper coincide with those of the current Government.

48. Figure 1 (taken from the Economic Study) shows development of the audience for newspapers in Hungary as a black line and the development of private advertising volume as a blue line. Each line is an index that is set to 100% in the year 1998. The figure does not show absolute levels of advertising. Instead, it shows the percentage changes in readership and in private advertising relative to the benchmark year 1998, for which this index is normalized to 1. While readership and advertising numbers cannot be compared in absolute terms, percentage changes are expected to be approximately the same if the value of advertising to the advertiser is approximately proportionate to readership as the Economic Study argues was likely to be the case on theoretical grounds.

Figure 1: The percentage changes in private advertising follow the percentage changes in readership



49. While an exact match in the percentage changes would not be expected, the general pattern displays the predicted pattern that private advertising changes approximately proportionately to a change in readership. This is an expected result showing the strong relationship between the two. It means that private advertising patterns are tied to objective measures of relative advertising returns between different newspapers that essentially reflect at first order how many people see the advertising.

50. One would expect that Government advertisement returns will also depend on how many people see the advertising. There is thus no fundamental difference between Government advertisement and private advertisement as to how the shares of advertising should be allocated among media enterprises. Unbiased Government advertising that does not create a selective advantage for some media outlets would therefore have advertising shares that are approximately distributed according to the shares of private advertising within each media type.

51. By contrast, Professor Kühn shows that Hungarian Governments have allocated a far higher share of advertising to Government-aligned media outlets compared to the private sector's share of advertising in those outlets at least since 1998. In other words, a change in a media owner's closeness to the Hungarian Government has systematically led to the Government's share of advertising in that media outlet to change relative to the private sector's share of advertising in that outlet. This difference is particularly striking during Fidesz-led Governments. Such a systematic pattern of the placement of advertising is entirely inconsistent with the behaviour of private market operators.

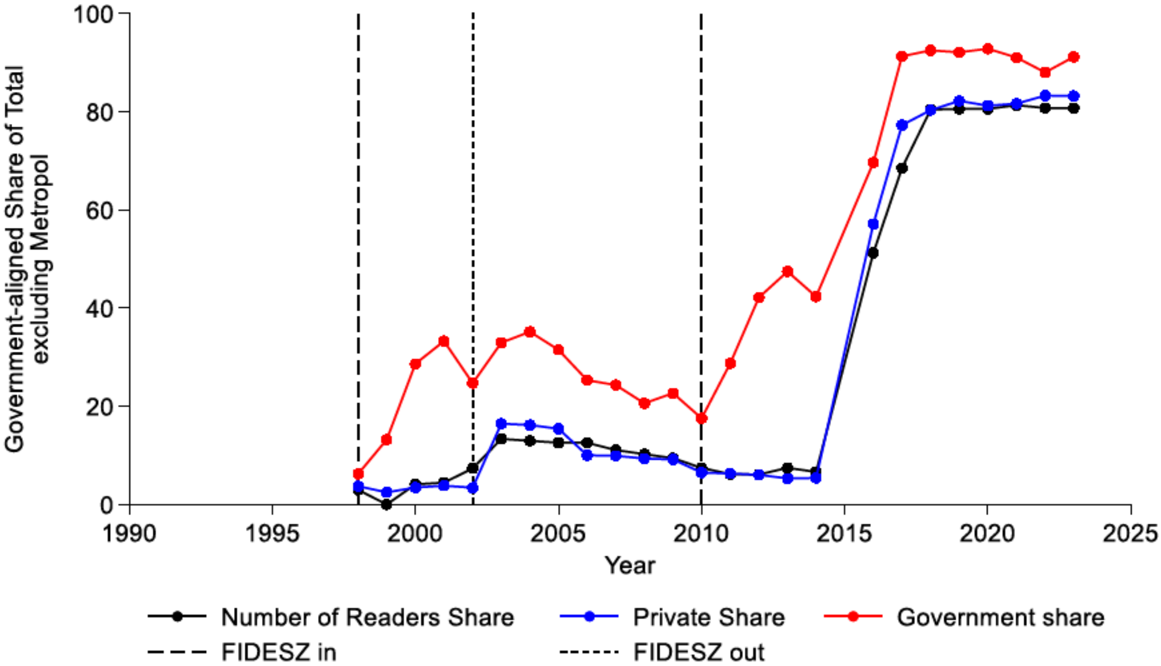
7) Evidence of Selective Government Advertising Favouring Newspapers Politically Aligned with the Fidesz Governments

52. Direct evidence of unlawful state aid must come from looking at the question whether the distribution of advertising shares across different newspapers is systematically distorted over time in favour of a specific group of newspapers.

53. In the Economic Study, Professor Kühn demonstrates that the Hungarian Government's advertising expenditures display a systematic bias at the aggregate level in favour of newspapers that are aligned with the Fidesz Government and against newspapers that are not. The evidence shows that, over time, the Government advertising has grown faster than private advertising - only for newspapers that are Government-aligned. On the other hand, the Government and private advertising patterns are aligned when newspapers are not aligned with the Government. Professor Kühn further finds that this is also systematically the case at the level of individual newspapers.

54. Figure 6 (taken from the Economic Study) shows the share of readership of all newspapers in Professor Kühn's sample combined that were in each year Government-aligned as a black dotted line. It is clear that the private advertising share is essentially the same as the readership share for private advertisers throughout the period. Hence, Government-aligned media receive a private advertising share that is proportionate to its readership.

Figure 6: Share of readership and private/Government spending at Government- aligned newspapers



55. The Government advertising share starts deviating dramatically from the private advertising share at the beginning of the first FIDESZ Government. Newspapers with a total readership share of 3.8% in the year 2001 received almost 28.9 % of the newspaper advertising budget of the Government for the firms in the sample. Excess advertising fell somewhat in the period from 2004 to 2009, but excess advertising now benefitted the newspapers aligned with the social democratic and liberal parties which were in government in this period. They now received a higher proportion of Government advertisement than the proportion of private

advertising or their readership would suggest. However, there was also some persistence in Government advertising towards FIDESZ-aligned newspapers. While their share in Government advertising fell considerably, they still received a somewhat higher share of Government advertising than their private advertising share and readership share would suggest.

56. When the second FIDESZ Government came to power, the Government advertising share for Government-aligned newspapers again increases dramatically although the private advertising share (and the readership share) of Government aligned newspapers falls. This increase does not reflect the increase in advertising for Government-aligned newspapers associated with the previously independent newspaper "Metropol", which was owned from 2011 onwards by Lajos Simicska, becoming Government-aligned in that year. This is excluded because readership numbers for regular newspapers and free newspapers are apparently not comparable. However, as Professor Kühn has shown in his report, the same pattern of divergence between private and Government advertising also holds for Metropol. Until 2015, the share of Government-aligned advertising increases considerably with the new FIDESZ Government, while private advertising in Government-aligned newspapers falls in line with readership shares.

57. The Economic Study shows that not only can such selective Government advertisement be detected at the aggregate level, but is also <u>systematically present at the level of individual newspapers</u>.

58. The advertising histories of Magyar Nemzet and Metropol illustrate particularly clearly the close connection between political allegiance of owners and the share of Government advertising depending on whether the owner is politically aligned with the Government. When there is alignment, the share of Government advertising in these titles exceeds the share of private advertising. As Professor Kühn notes, the examples of Magyar Nemzet and Metropol show how the changes in alignment unambiguously identify the existence of selective state aid at the individual newspaper level.

59. During Fidesz I and Fidesz II Magyar Nemzet and Metropol were controlled by Lajos Simicska, so that they were Government-aligned. They were not Government-aligned between these administrations and after the 2015 Dispute. The pattern of Government and private advertising for these two newspapers thus illustrates particularly well how systematic selectivity and market distortions were generated from a coordinated Government advertisement policy for newspapers. For these newspapers Professor Kühn observes both (i) changes in political orientation of the Government dramatically changing Government advertising intensity depending on political alignment of the newspaper and (ii) changes in ownership that change the alignment of the newspaper with the Government.

60. Until 2015, the titles aligned politically with FIDESZ were dominated by two titles indirectly controlled by Lajos Simicska: Magyar Nemzet and, since 2011, Metropol.[19] After the 2015 Dispute between Simicska and Orban broke out, advertising in these newspapers almost immediately stopped, giving further support that advertising was selectively granted to newspapers that were supportive of the Government.

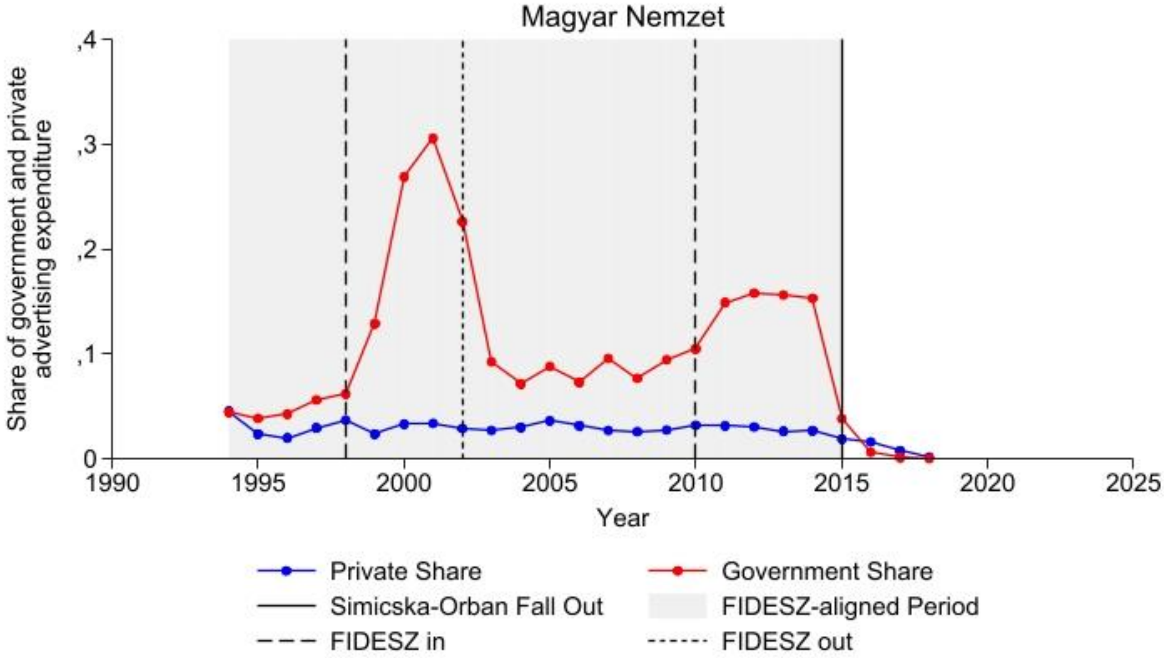
(a) <u>Magyar Nemzet</u>

61. Magyar Nemzet was bought through a state-owned bank in 1998 for the equivalent of €3000.

---

[19] As explained above, Metropol was acquired by Lajos Simicska in 2011

Figure 8: Private and Government advertising shares for Magyar Nemzet



62. Magyar Nemzet was effectively controlled by Simicska before the first Fidesz Government came into power. Although the private advertising share remained in the single digits, total Government advertising exploded after late 1998 when the Fidesz Government came into power and peaked in 2001, the last full year of the Fidesz Coalition I.

63. While Government advertising shares were somewhat higher than private advertising shares until 1998, they were still in the single digits. However, by 2001 Government advertising in Magyar Nemezet had risen to 27% of all Government advertisement in the 33 largest newspapers compared to a private advertising share around 3.5%.

64. The Government advertising share remained at a disproportionate level even after the end of the Fidesz Government, but at a more moderate 8% to 9% relative to a 3.5% private advertising share. However, when Fidesz returned to power in 2010 (Fidesz II), the Government advertising share jumped immediately and remained at a level of about 15% compared to a private advertising share that remained at 3.1%. The Government advertising share was thus four times the share in advertising allocation of the private sector.

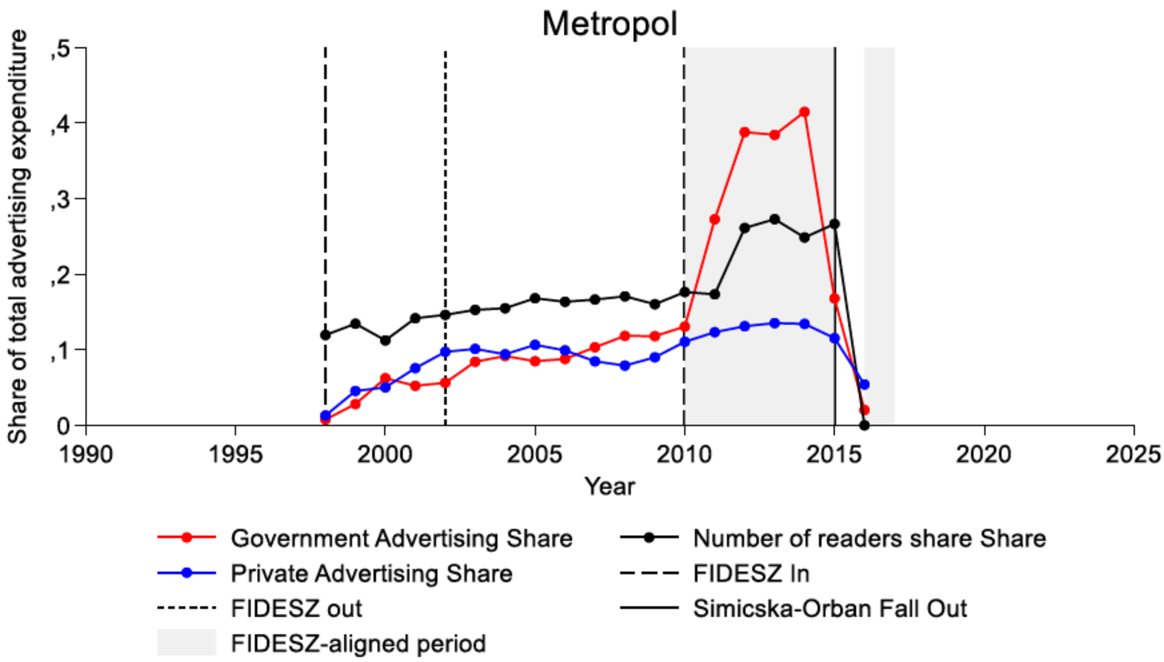
65. The Government advertising expenditure in Magyar Nemzet also illustrates what happens when the political alignment of the newspaper with the Government changes. During the 2015 Dispute, Simicska and Orbán had a falling out and Government advertising in the Simicska aligned newspapers dropped almost immediately. The fact that there is still a share of about 4% in 2015 is due to the fact that the Dispute occurred during the year 2015, so that for part of the year advertising remained high before it collapsed.

66. From 2016 onwards the Government advertising share was well below the private advertising share, which was now at only 1.6%. Government advertising fell to zero and shortly after, the newspaper had to close.

(b) <u>Metropol</u>

67. Metropol also shows patterns that reflect a systematic Government policy of selectively favouring Government-aligned newspapers through disproportionate advertising expenditure. However, in this case, Professor Kühn can also see the effect of the purchase of Metropol by a Government FIDESZ aligned owner in the same year as the second FIDESZ Government came into power.

Figure 9: Private and Government advertising share for Metropol



68. Metropol was a newspaper that was distributed for free at Metro and Railway stations. It came under the control of Simicska in 2011 after the Fidesz II came into power in 2010. It developed a very significant circulation. It must have had very significant readership, but as can be seen from Figure 9, this did not translate into a proportionate share of private advertising (before and after it became Government-aligned). Metropol reader share is immediately reported

above 10% and rising. However, the advertising share (blue line) remains very significantly below this reported readership share. The reason appears to be that the readership of freely distributed newspapers is hard to track because only the number of printed copies can be verified. These numbers are therefore not comparable with readership numbers based on purchased copies for other newspapers.

69. Under the hypothesis that private advertisers will allocate advertising share according to impact, Professor Kühn compares the Government advertising share of Metropol with the private advertising share to detect state aid, and observes that the Government advertising share tracks the private advertising share fairly well until 2010.

70. However, in 2010, in close proximity to the elections in which FIDESZ came back into Government, Lajos Simicska bought Metropol and brought it into political alignment with the new Government. The Government advertising share immediately more than doubled from 12% to 26% of the Government advertisement budget (spent on our sample of firms). While readership and the private advertising share flattened off after that, the Government advertising share further jumped to around 40% on average during the next three years, four times the share that private advertisers spent on Metropol. This advertising policy of the Government on these two newspapers alone led to an increase in Government advertising expenditure in newspapers by about 50% while private advertising expenditure and readership in newspapers fell overall and for Magyar Nemzet and Metropol.

71. Overall, 55% of all Government advertising in 2014 went to the two newspapers that were at the time controlled by Simicska, despite the fact that their combined private advertising shares were below 15%. These newspapers represented the bulk of the readership of newspapers that were until 2015 aligned with the Fidesz Government.

72. After the 2015 Dispute between Orbán and Simicska broke out, the advertising share immediately collapsed to 15%, and then fell to 2% in 2016, below the private advertising share. Metropol had to close down completely because the Budapest Transportation Company and the Hungarian Railway, state-owned enterprises, decided not to allow the placing of newspaper on the premises.[20]

(c) <u>The Media Consolidation</u>

73. The most frequent changes in ownership have been for newspapers that at some point in the sample have switched from a position that was not aligned with FIDESZ to one aligned with FIDESZ.

74. A large proportion of those ownership changes falls between 2015 (i.e., after the 2015 Dispute) and 2018, which marked the Media Consolidation phase and the creation of KESMA. Indeed, most changes in ownership that can be observed in Professor Kühn's sample have affected newspapers that switched from non-Government-aligned to being Government-aligned at some time. An overwhelming proportion of those ownership changes occur between 2015 and the creation of KESMA in 2018. There is a consistent pattern surrounding these changes: while

[20] This could in itself be considered an unlawful state aid issue. Essentially, the Hungarian State through its control of Hungarian Railway and Budapest Transportation Company used its state resources to shift rents to other owners. Namely the Government forecloses the current owner from profits that can be made when it gets access to the metro space at market prices. This either depresses the price at which the newspaper can be purchased by a more Government-aligned owner - or it has to close down and entry based on a selected owner can be arranged by giving selective access to the transportation properties. The latter is what happened. A new title, "Lokal", replaced Metropol. It was owned by Árpád Habony, Orbán advisor.

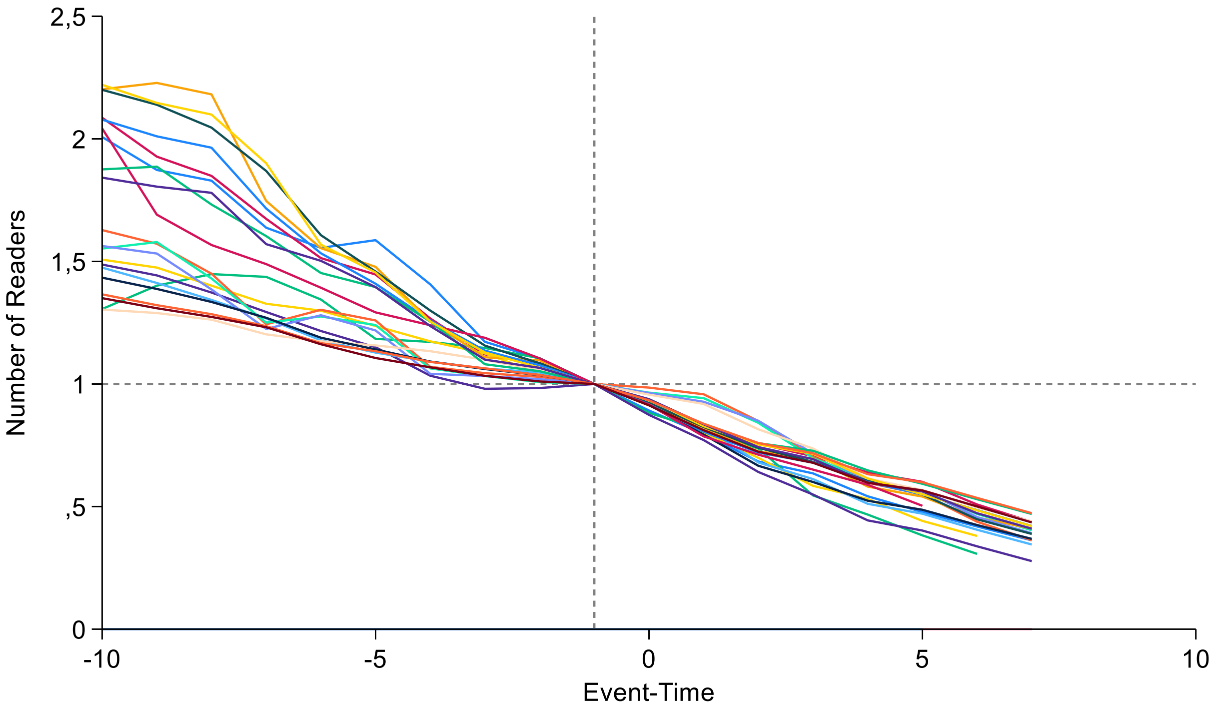
private advertising shares do not change from trend behaviour, Government advertising shares rise dramatically for four years and then somewhat fall to a level that still implies considerable state aid. This pattern clearly shows selectivity of Government advertising towards newspapers that change ownership to becoming Government-aligned during the later FIDESZ Governments after 2011.

75. Figure 7 is taken from the Economic Study and shows the indices for readership, private advertising spending, and Government advertising spending centred around the year before the ownership transition to a FIDESZ-aligned owner. Each index is set to 100% (i.e. 1) for that year.

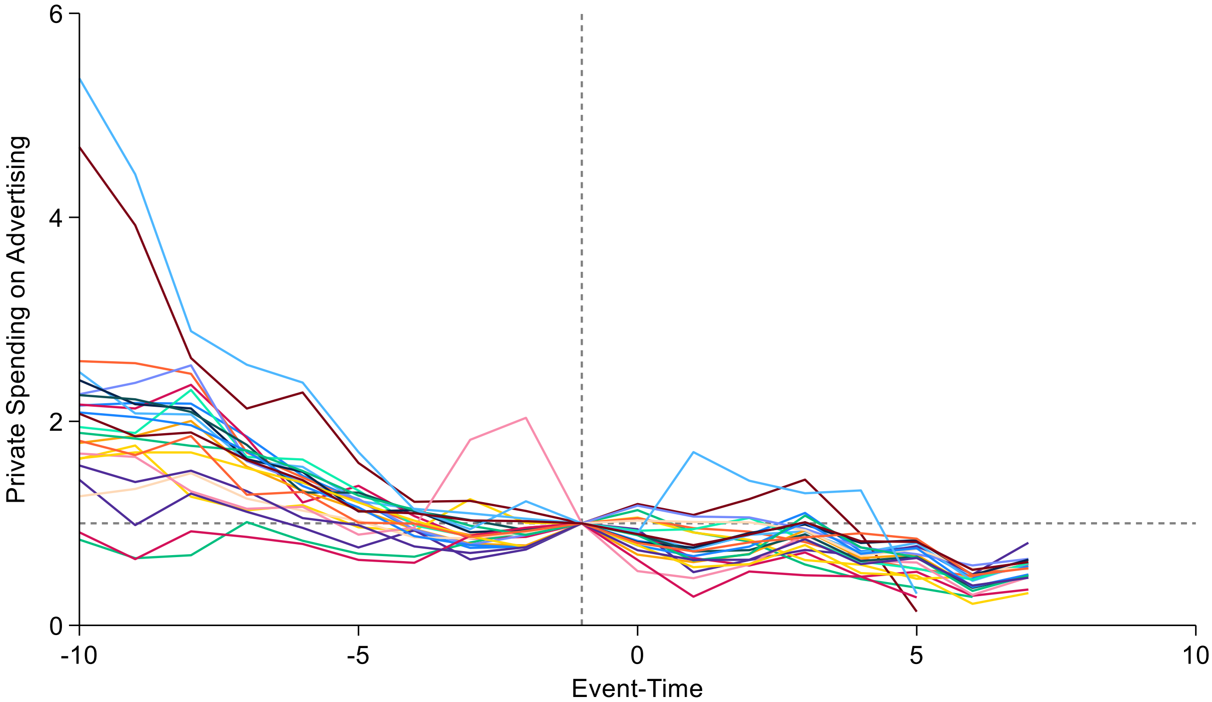
76. The ownership changes are all within a relatively narrow time window because most of them fall into the period after 2015. The index shows 10 years before the ownership change and several years after. The first panel in Figure 7 shows the readership index, which continuously falls as readership overall in Hungary did over the entire time period for which observations are included in this sample. Qualitatively, the private advertising index follows the same pattern for these newspapers, falling consistently over time.

Figure 7: **Readership, Private Advertising spending, and Government advertising spending indices before and after switch to Government-aligned ownership**

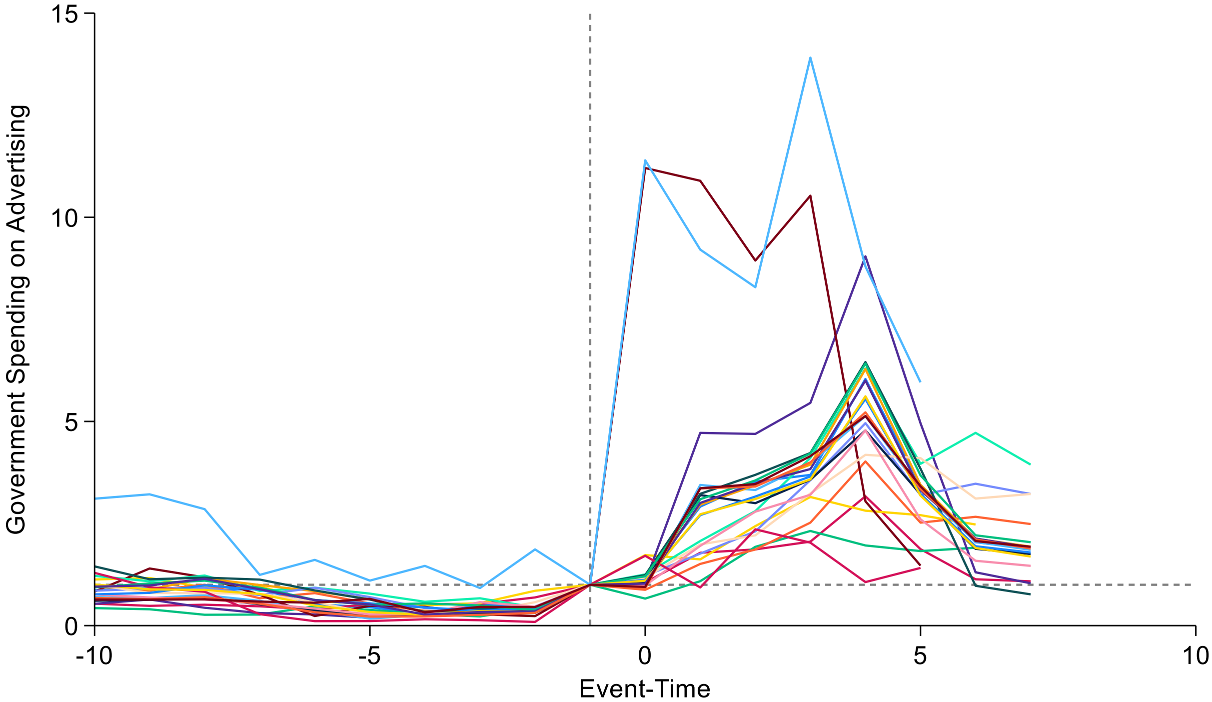
Readership Index



Private spending Index



Government spending index



77. Before the ownership change, changes in Government advertising look very similar to private advertising changes. After the ownership change to a Government-aligned owner during successive Fidesz Governments, the two significantly diverge. After the ownership change,

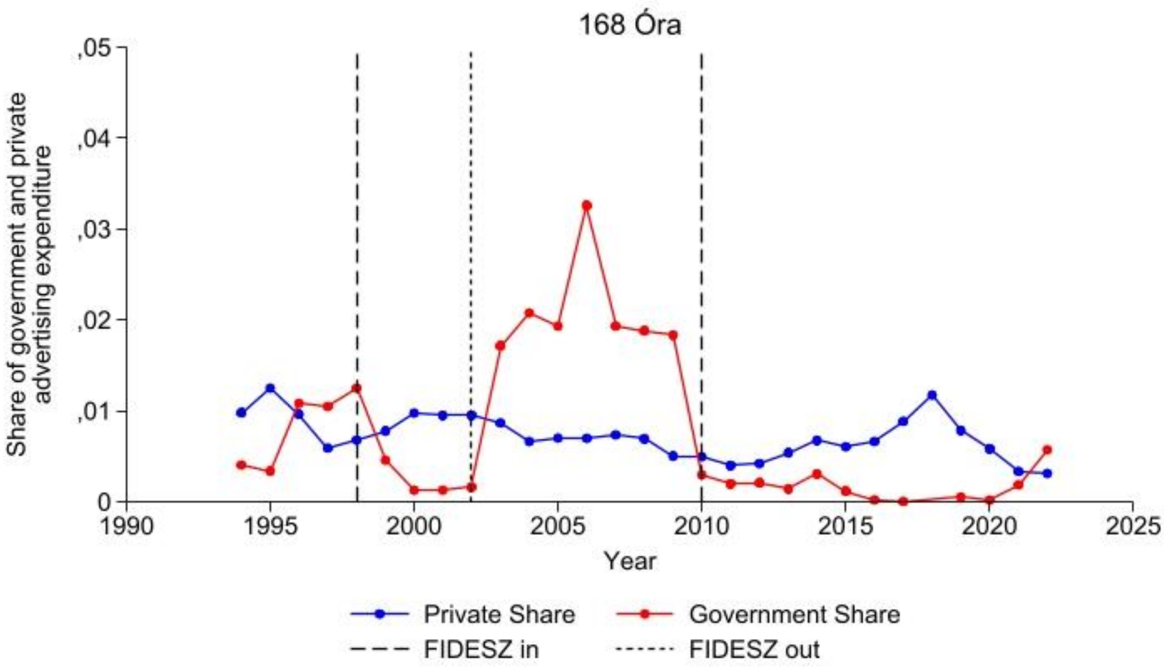
Government advertising grows between 5 to 15 fold before falling back to a range that still implies on average a fourfold increase in Government advertising. This clearly creates the effect of rewarding the new owners for their investments in these newspapers. The advertising increases after purchase by Government-aligned owners, and thus are tantamount to a selective investment subsidy.

(d) Government Advertising during Medgyessy and Gyurcsány I/II

78. The Economic Study notes that the phenomenon of newspapers close to the reigning Hungarian Government receiving more than the expected share in Government advertising (benchmarked by the private advertising share) is not unique to Fidesz administrations.

79. As the examples below show, newspapers close to the social democratic and liberal parties in power between the time periods covering Fidesz I and Fidesz II (namely Medgyessy and then Gyurcsány I/II) also received a disproportionately higher share of state advertising. However, these distortions do not reach quite the level of distortions in advertising shares that characterize Government advertisement during the Fidesz Governments after 2015.

Example: Figure 10: Private and Government advertising share for 168 Ora



80. 168 Óra is known to have had a liberal to left liberal stance. During Fidesz I, its Government-advertising share was rapidly reduced far below the private advertising share. With the new social democratic and liberal Government after 2002, the state advertising share rapidly grew to two or three times the pre-Fidesz advertising share, while the private advertising share consistently fell. With Fidesz II the state advertising share dramatically fell to half the value of the private advertising share and after 2015 was at or close to zero despite increasing private

advertising. Government advertising share in 168 Óra started to increase after 2020 ownership change, when 168 Óra became Government-aligned.[21]

81. As the Economic Study demonstrates, there has been consistently a selective advantage for newspapers politically aligned with the Government of the time. Government-aligned media outlets have received – and continue to receive - far higher share of Government advertising compared to the private sector's share of advertising in those outlets. A media owner's proximity to the Hungarian Government has systematically led to the Government's share of advertising in that media outlet exceed the private sector's share of advertising in that outlet. This difference is particularly striking during Fidesz-led Governments, which continues until today.

8) The advertising patterns for Online Media show the same Patterns as those for Newspapers

82. The Economic Study demonstrates that the same patterns of consistent, selective advantage granted to the Government-aligned media have been present for Online media.

83. While no data is available to systematically track advertising at the level of each online platform, the missing audience data is not essential for the analysis of state aid. In any event, it should be expected that private advertising on online media is broadly proportional to "eyeballs" just as for private advertising for newspapers.

84. However, even if this is not the case, it remains true that the basic criterion for private advertising effectiveness is attention. This should be no different for a Government that behaves according to the MEOP. The central criterion for selective state aid is therefore not whether Government advertising is proportional to audience, but that it is proportional to private advertising.

85. The Economic Study shows the trend in (the indices of) advertising spending (private vs. Government) on the major online media portfolios in Hungary. Prof Kühn selected the top 5 online portfolios for each year from 2005 to 2022.[22]

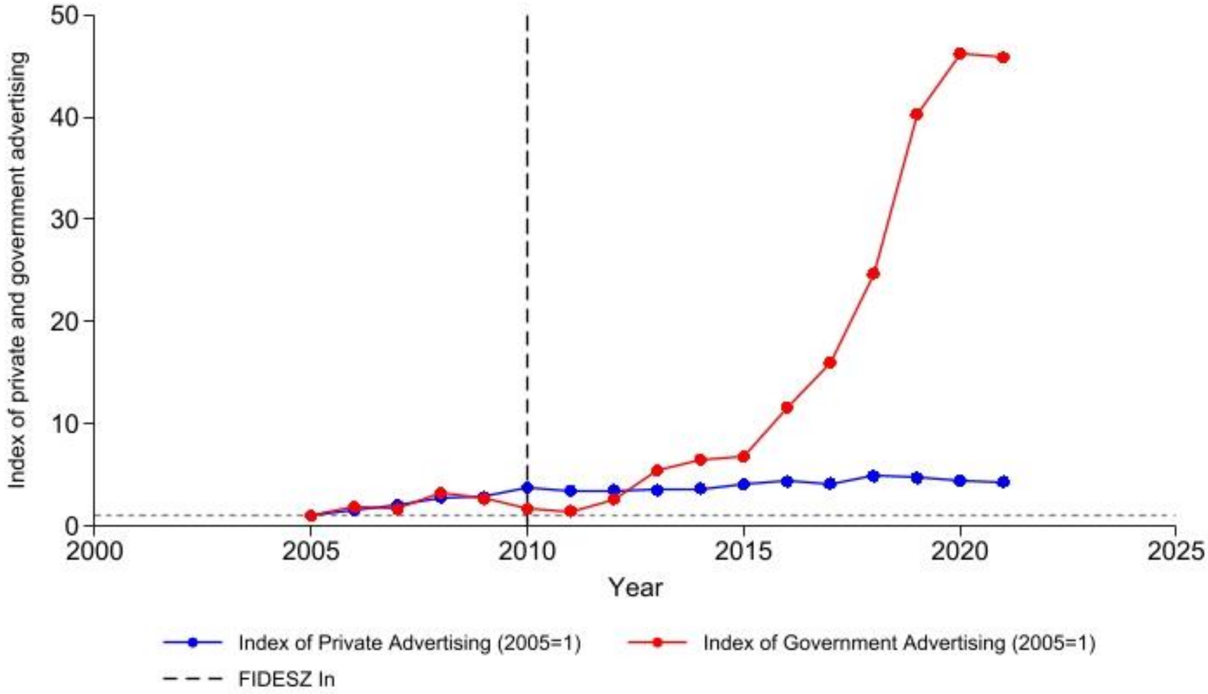
86. Figure 14 (taken from the Economic Study) shows the indices for private and Government advertising indexed to the year 2005 (Index set to 1). The indices thus show the growth in advertising relative to the base year 2005. From 2005 to 2009 Government advertising and private advertising grow at the same rate. Government advertising is reduced relative to private advertising at the beginning of the second FIDESZ-Government in 2010. However, at least from 2014 when the first media company with one of the larger online portfolios switched ownership turning it into a Government-aligned company, Professor Kühn observes Government advertising growth relative to 2005 exceeding private advertising growth.

87. While the private advertising share in the four largest online portfolios was almost constant from 2010 onwards (or showed only very small increases), Government advertising grew enormously from 2016 onwards reaching about 9 times the growth of private advertising in 2020 (relative to 2015).

[21] https://media1.hu/2020/07/10/breking-atalakul-a-168-ora-es-a-neokohn-tulajdonosi-szerkezete-a-pesti-hirlap-eddigi-tulajdonosa-a-ceg-vezetoje-lesz/

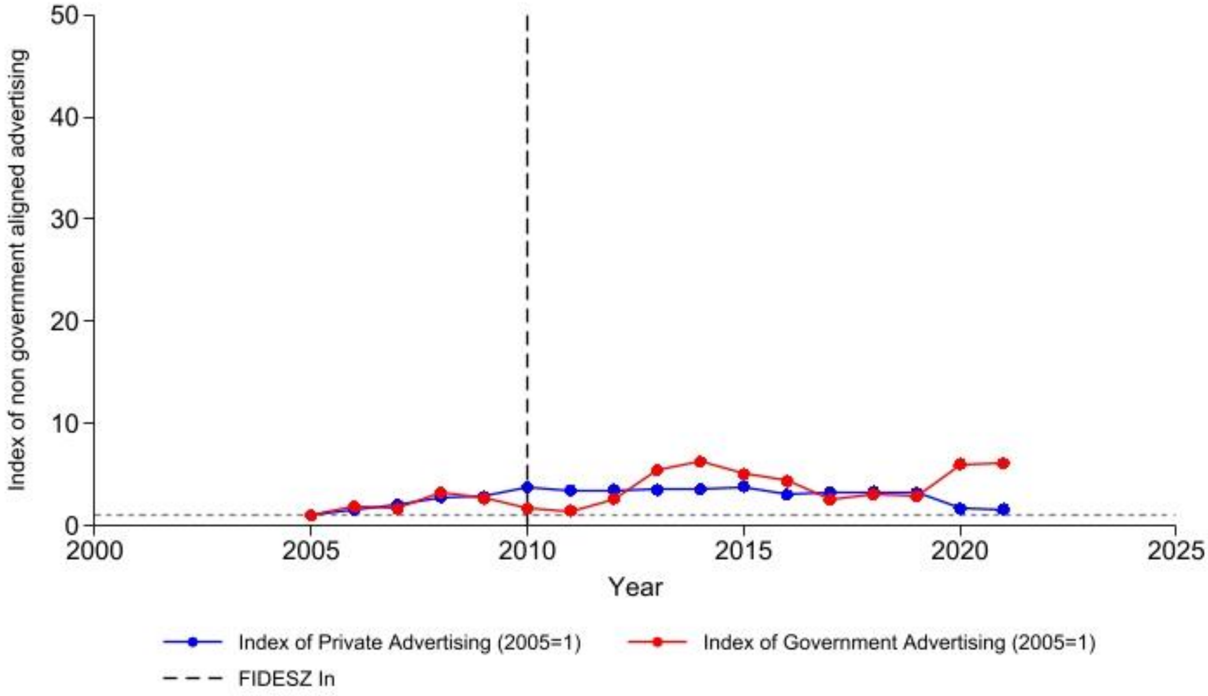
[22] The list of leading portfolios remains consistent over time. Between 2005 and 2022, there are a total of 9 major online portfolios: (i) Adaptive Media, (ii) Central Médiacsoport, (iii) Evomedia (New Wave Media), (iv) Generál Média (v) HVG portfolio, (vi) Indamedia, (vii) Origo-Adnetwork, (viii)Ringier (and Axel Springer) and (ix) Mediaworks (Salesworks). Before 2005 there are no online portfolios of meaningful size to extend the analysis.

Figure 14: The evolution of private and Government advertising in online media



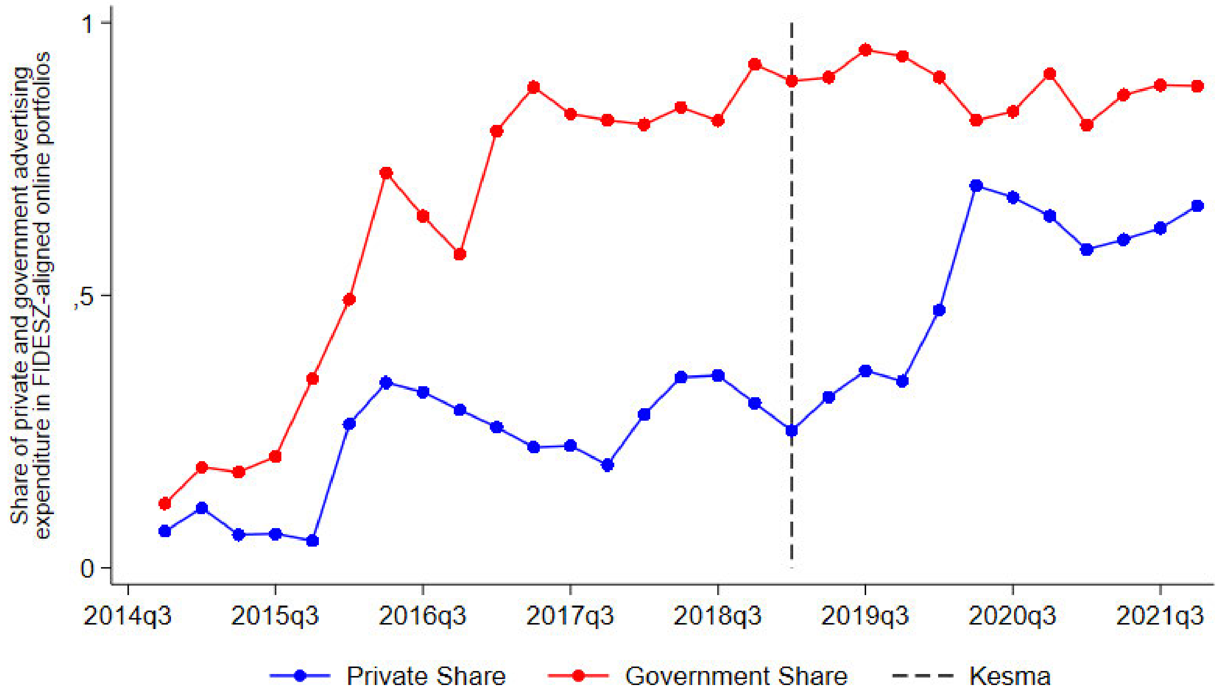
88. All of this growth of Government advertising expenditure relative to private advertising expenditure is driven by selective advertising expenditure on Government-aligned online portfolios. This follows from the graphs in Figure 15, which show the evolution of Government advertising and private advertising on online portfolios that were not Government-aligned. The evolution of advertising expenditures is very similar for private and Government advertising. As Professor Kühn observes, especially after 2015, there is no significant deviation between Government advertising and private advertising growth relative to 2005. There is a slight deviation from 2020 and 2021, but this is of a much smaller order of magnitude than the divergence between private and Government advertising in Government-aligned online media.

Figure 15: Private and Government advertising evolution for non-Government-aligned online portfolios



89. As for the newspaper market, selective state aid is also seen in the comparison of the shares of Government advertising and private advertising of the Government-aligned online platforms. Figure 16 shows the share of private advertising (blue) and of Government advertising (red) for FIDESZ-aligned online portfolios from 2014 onwards, of the four online portfolios where data is available.

Figure 16: **Private and Government advertising share in FIDESZ-aligned online portfolios**



90. From the second FIDESZ Government onwards there was a concern in the Government about the growing online media sector. The online media sector was dominated by two platforms, Origo and Index, which received more than 75% of advertising share before the second FIDESZ administration came into office. This advertising share fell over time as other online platforms entered the market and the volume of online advertising grew.

91. Origo was owned by the Magyar Telekom, a subsidiary of the German telecoms market leader Deutsche Telekom. The second FIDESZ Government started to exert pressure over foreign firms owning media companies in Hungary. In the telecommunication market it introduced a minute-based tax on calls and a utility tax of 20-30 million Hungarian forints. This allegedly had the effect of halving the annual profits of Magyar Telekom's telecoms business. Attempts by the parent company Deutsche Telekom to appeal with the Government of Hungary were unsuccessful. Reporting suggests that the Government was already putting pressure on the editors of Origo at the same time after articles about the hotel bills of János Lázár, the Minister of the Prime Minister's Office, appeared on Origo.[23] Magyar Telekom fired the chief editor, Gergő Sáling in 2014 and the editorial team left Origo.

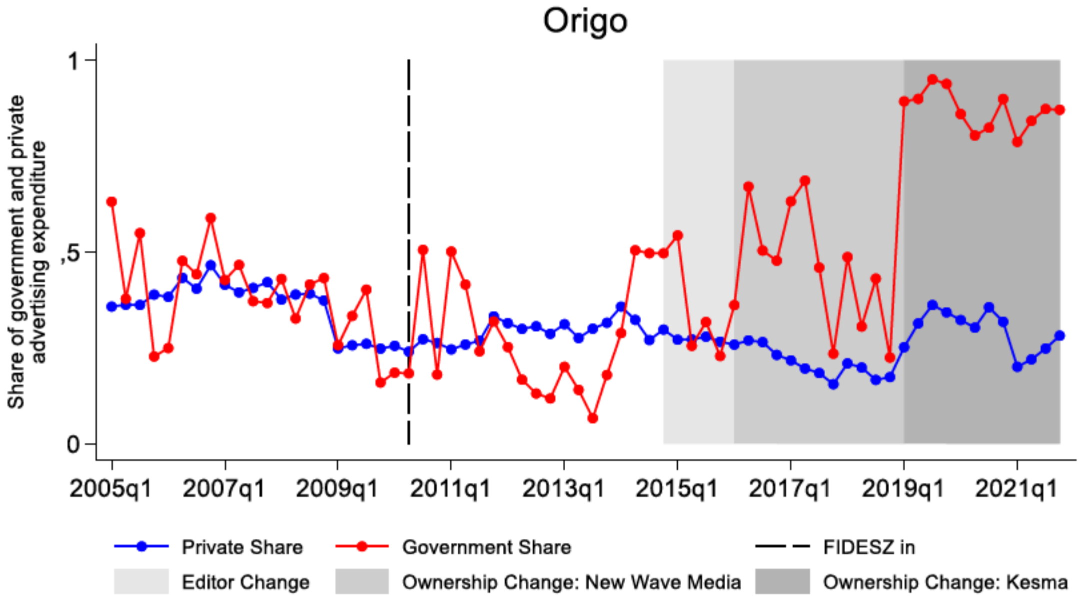
92. In this context and in the light of Origo not being part of Deutsche Telekom's core business, Deutsche Telekom recognized the potential to reduce the pressure on Magyar Telekom. It started to look for a buyer for Origo and sold it to New Wave Media in January 2016. New Wave Media was a business group owned by Ádám Matolcsy, the son of the governor of the central bank and a FIDESZ member. Ownership was transferred to KESMA in January 2019.[24]

93. These events are reflected in the advertising share of Origo in the largest online portfolios. Figure 17 below shows the trend in the share of private and Government advertising spending on Origo relative in total advertising spending on the nine online portfolios included in Prof. Kühn's sample.

[23] See https://444.hu/tldr/2022/02/28/the-art-of-media-war-this-is-how-viktor-orban-captured-the-free-press-in-hungary Accessed 19.1.2025.

[24] See Wikipedia entry on Origo (link).

Figure 17: Origo share of private and Government advertising spending on largest online portfolios



94. Figure 17 shows that in the time period from 2005 to 2011 the Government advertising share oscillated around the private advertising share as predicted by theory. This changes in the period 2011 to 2013 where the FIDESZ Government generally put Magyar Telekom under pressure. There appears to be some relenting, possibly because Deutsche Telekom was looking for a solution and advertising on Origo increased slightly after the editor was replaced. However, advertising went back to a proportional amount relative to the private advertising share until the sale to New Wave Media when the joint online Government advertising share of Origo and the other online properties of New Wave Media increased to over 60% while the joint private advertising share was decreasing and falling below 35%.

95. Similar to the consolidation of newspapers in the hands of FIDESZ-aligned owners (especially KESMA) the very high Government advertising shares are temporary and are somewhat reduced in the second year of the new ownership. However, there is still clear selective state aid to the consolidated Origo/New Wave Media which continues when New Wave Media is integrated into KESMA in January 2019.

9) The advertising patterns for TV show the same Patterns as those for Online Media and Newspapers

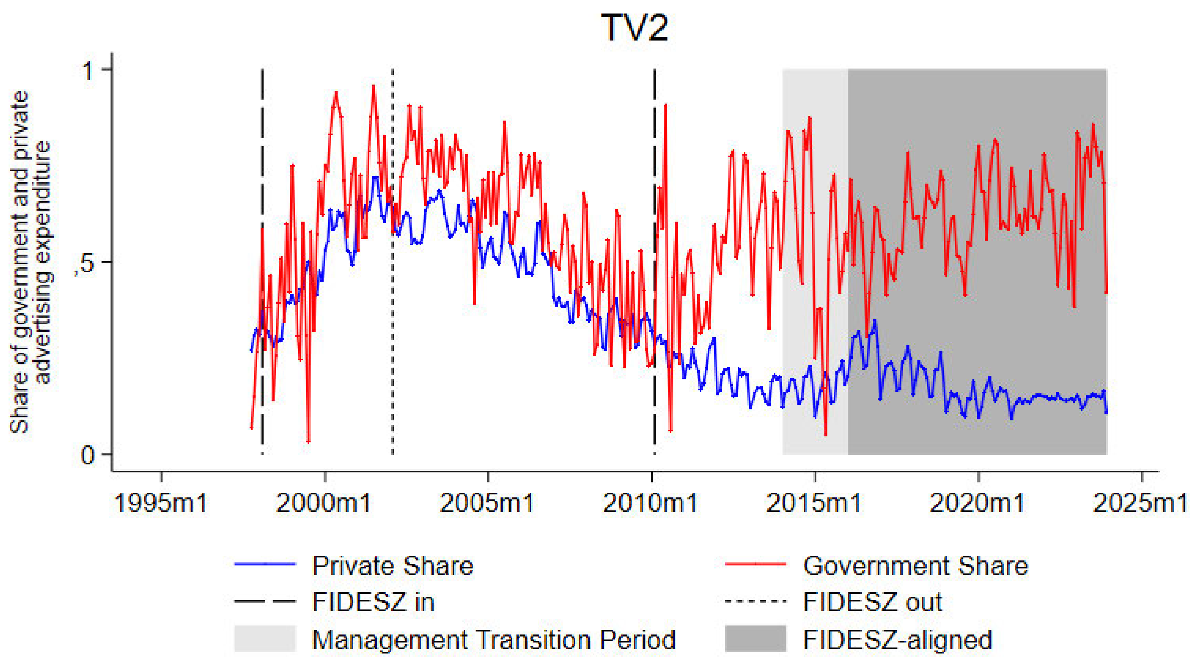
96. Hungary, as many European countries, has both private and public broadcasters. Since public broadcasters are publicly owned and are therefore partly funded from the state budget (as well as being financed by private advertising), Government advertising on Government channels is not directly comparable with private advertising. To assess state aid, the Economic Study focuses on Government advertising on private TV channels.

97. The private TV market in Hungary has been dominated since the beginning in 1997 by RTL and TV2. The Economic Study therefore focuses on these two channels with data spanning

from 1997, the year both channels began operating in Hungary within three days of each other, until 2023 for which the data is available.

98. TV2 was founded by SBS (formerly Scandinavian Broadcasting System) in 1997 and went on air three days before its competitor RTL. It immediately establishes a private advertising share of about 30% and then rises to almost 65%. As can be seen from Figure 19, the monthly Government advertising share fluctuates randomly around the private advertising share until the year 2000. However, in the middle of the first FIDESZ Government, the Government advertising share is distinctly higher than the private advertising share. After the first FIDESZ Government the private advertising share starts falling considerably, but the Government advertising share continues to be slightly higher under the Social Democratic/Liberal Governments until 2007. In that year TV2 comes under the ownership of ProSiebenSAT1 Media through its takeover of SBS.

Figure 21: **TV2 share of private and Government spending on all private TV channels (monthly)**



Note: Based on Kantar advertising data The number of TV channels in the sample is 53.

99. After the ownership change, the private advertising share in TV2 continued to decline. The Government advertisement share remains aligned with the private advertising share. According to press reports TV2 was making considerable losses, when the second FIDESZ Government came to power in 2010, while RTL was highly profitable. This was reflected in the relative viewership of the two channels, which can also be seen in the dramatic decline in private advertising share from about 60% in 2002 when the first FIDESZ Government left office to about 35% when FIDESZ returned to power. At the same time RTL had gone from a private advertising share of about 35% in 2002 to about 50% in 2010.

100. At the same time ProSiebenSAT1 was deeply indebted and was trying to raise financing to focus on improvements in its German language offerings. For this purpose, the company sold its Scandinavian Broadcasting System at the end of 2012 to Discovery Channel and announced at the same time that it would also sell its Eastern European holdings including TV2. Apparently, Discovery Channel was a potential buyer also for TV2. However, in early 2013 the Hungarian Government imposed a new tax on advertising, which deepened the profitability issues for TV2. Press reports have interpreted this tax as an instrument to deter international investors from buying TV2.[25] A deal to sell TV2 to its management in a management buyout was announced at the end of 2013, which included an option for Simicska to purchase TV2.

101. In Figure 21 it becomes apparent that the Government advertising share increases very significantly in 2013 at a time where it is becoming apparent that the management buyout deal (including a buy option for Simicska) was in the works. Despite private advertising shares continuing to fall, the Government advertising share rose to around 60%.

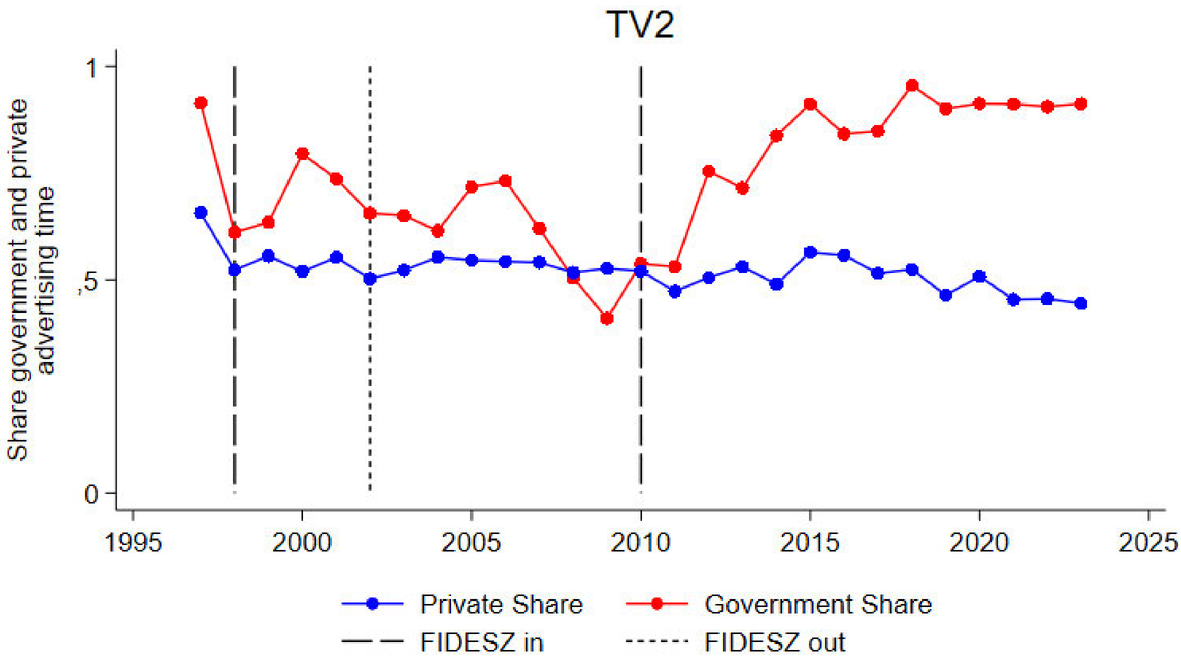
102. The Government advertising share collapsed in early 2015 when, during the Simicska/Orban Dispute, László Simicska tried to exercise his option to buy TV2, in an attempt to prevent an ally of the FIDESZ Government, Andy Vajna, to purchase the channel. However, since Simicska could not finance the transaction, Vajna prevailed at the end of 2015 and acquired TV2. The Government advertising share jumped back to about 60%. After Vajna's successful bid for TV2, private advertising shares also grew but never exceeded 40% before they started to fall again by the end of 2016. The private advertising share reached a level of 20% in 2020. By that time the Government advertising share in TV2 had reached 70% and further grew to 80% in the last quarter of 2023. According to press reports, absolute Government advertising grew from 5.5bn to 23.7bn Forint in 2020, the latter reportedly exceeding the profit of the main competitor RTL in that year.

103. Since TV2 and RTL dominate the Hungarian Television market, the relationship of private advertising share and Government advertising market share is almost an exact mirror image of TV2 for RTL.

104. The Economic Study's results for the share of private and Government advertising expenditures are also confirmed by an analysis of the shares of total advertising time contracted with TV2 and RTL. In terms of private advertising time, both TV channels have received about a 50% share, slightly declining for TV2 and increasing for RTL. However, the Government share of advertising time in TV2 substantially exceeds the private advertising time share, coinciding with the pattern Professor Kühn found for the Government advertising shares for expenditure. They exceed the private shares by up to 20 percentage points before the change in ownership in 2007 and grow again in 2012 to the same level before rising to around 80% after TV2 becomes fully Government-aligned.

[25] See https://444.hu/tldr/2022/02/28/the-art-of-media-war-this-is-how-viktor-orban-captured-the-free-press-in-hungary, accessed 19.1.2025

Figure 22: TV2 shares of private and Government advertising time in total advertising time TV2+RTL (yearly)



Note: Based on data from Kantar

105. Government advertising in private television stations in Hungary therefore also has selective Government advertising in favour of Government-aligned TV stations. This concerns particularly TV2 due to the large share of viewership consolidated by RTL and TV2 in the private TV market. The subsidies are large, of an order of magnitude that is comparable to that of the profits of RTL. This means that TV2 receives state aid of an order of magnitude that corresponds to the entire internally generated capital for investments of RTL. This is bound to have significant distortive effects for content competition between the two channels.

106. The example also confirms the practice of the Hungarian Governments after 2015 to incentivize the purchase of media outlets by Government-aligned businessmen trough the promise of increased profitability through Government subsidies.

10) Imputability of the measure to the Government

107. One of the most contentious questions in state aid is whether the funding can be imputed to the state. Such imputability may be possible when the state compels a private or public company to expend resources. However, there have been instances where the European courts have questioned if a financial transaction can be imputed to the state when the state uses money from its budget but disburses the funds through an intermediary.[26] For this reason, it is often assumed that imputability will not apply when the intermediary is selected through an auction procedure.

[26] See e.g. Judgment of 19 March 2019, Italy v Commission, T-98/16, T-196/16 and T-198/16

108. The Economic Study demonstrates conclusively that imputability to the state is already guaranteed through the special characteristics of advertising markets, and further confirmed by the empirical evidence on advertising in Hungary:

a) Firstly, in advertising markets, an advertising agency acting for a client can never be the residual claimant of the returns to the investment. The very nature of advertising markets precludes that the winner of an auction can act like a private firm placing advertisements in the market.

b) Secondly, a private actor, acting as a residual claimant, would never place advertisements depending on the political alignment of a media outlet with government. The empirical evidence on the advertisement demonstrates an alignment on selectivity between Government bodies and Government-owned enterprises – an alignment that cannot arise unless it has been directed by the government. The observed coordination of the advertising allocations between the Government bodies and Government-owned enterprises means the advertising agencies apply the same criteria across Government bodies and Government-owned enterprises, even though the advertising goals of Government-owned bodies are different from those of Government bodies.

109. As Professor Kühn explains, an auction is a particularly attractive incentive mechanism, when it makes the winner of the auction the **residual claimant** of the benefits that can be earned from the transaction. In such cases, the private firm appointed by the government to make a financial contribution to other undertakings will apply the same conditions a private company would. The Economic Report refers to large and high risk projects (e.g. airport construction) as an example to demonstrate this mechanism.

110. For example, an airport construction would typically not be a profitable investment for a Government in light of the high investment and operation costs - unless externalities for the local economy are taken into account, thus making government funding legitimate. As the construction and operation of airport is a high-risk financial activity, the government can provide a subsidy to incentivise investment. When the construction and operation of the airport is auctioned off to a private company in a competitive auction, the necessary subsidy is reduced to the minimum possible, also allowing the government to subsidise the airport in a non-selective way. The company that wins the auction to build and operate the airport will take into account all the costs it has to bear for construction and operation, and the revenues that it can make from optimally operating the airport. This means the winning company receives all the profits that can be made from the airport in addition to the subsidy (making that company the residual claimant). Therefore, the firm has the incentive to compete the subsidy down to the lowest level necessary to win the project.

111. The key insight of this example is that the government does not derive any benefit from the actions of the contracted operating company, except for the externality that arises from the airport being built and optimally operated. Whatever profits can be earned from operating the airport go to the operating company. That is what is meant by the operating company being the residual claimant.

112. As the Economic Study explains, the auctioning off of placing advertising portfolios in the market can *never* lead to advertising agencies being residual claimants. In the advertising context, the return from the advertising comes from sales of products or government messages reaching consumers. Thus, the benefits from placing of an advertisement always go entirely to

the party that hires the advertising agency – whether a private advertiser, or the Government / the Government-owned enterprise - even if the mechanism for hiring the advertising agency is an auction.

113. As the winner of the auction, the advertising agency does not receive the benefits from advertising (which, as explained above, arise from the reactions of media audiences). The advertising agency is thus not a residual claimant of the benefits of the advertising transaction as a private advertiser would be. The auction is simply about appointing an agent, who then must carry out the instructions of the government. An agent is, by definition, a party which is only paid for services, it is *instructed* to do. This means that there is no decision scope for the advertising agency on which media outlets to target for advertising purposes.

The Bonus Act 2015

114. The economic theory that the winning advertising agency is no more than an agent of the Government is further supported by the legislative actions undertaken by the Hungarian Government. These actions have taken any residual incentives away from those agencies to place advertisements in a cost minimising manner.

115. In the market-based Counterfactual where the goal is to maximise return on investment (i.e., in case of ad placements, the goal is to maximise ad exposure), an advertising agency tasked by the advertiser would be allowed to retain all or part of discounts it obtains from the media outlet (to incentivise it to obtain best value). Media outlets that are less attractive to advertisers will quote lower prices per unit of advertisement, making the price a way to allocate the advertisement efficiently and giving the agency incentives to do so.

116. In 2015, the Hungarian Parliament adopted the Bonus Act. The new law prohibited such incentives by requiring agencies to pass any discounts back to the advertiser. Since 2015, advertising agencies can only charge fees for the provision of the agency service. Agency fees paid by the advertisers to advertising agencies are fixed at 15% of the fee for publishing of the advertisement, and agencies are prohibited from accepting any other financial gains, gifts or grants from publishers or other third persons.

117. Entities which obtain financial gain in violation of the Bonus Act may face a consumer protection fine equal to ten times the financial gain obtained. Although discounts are allowed under the Bonus Act, such discounts must always be passed along to the advertisers – in this case the Government. The advertising agencies thus have no incentive to place advertisements according to the higher returns and thus have no systematic incentive to any specific objective.

118. If advertising agencies are allowed to receive only a fixed share (i.e., 15 %), this share remains the same independent of how they allocate the advertisements. Any residual ability or incentive on the part of the advertising agency to place advertisements in an independent and profit-maximizing manner has therefore been removed through the Bonus Act. Inevitably, economic considerations no longer matter and instead, non-monetary incentives determine the advertisement placement. It is therefore in the interest of the agency owners to direct advertisement in the way the Government wishes.

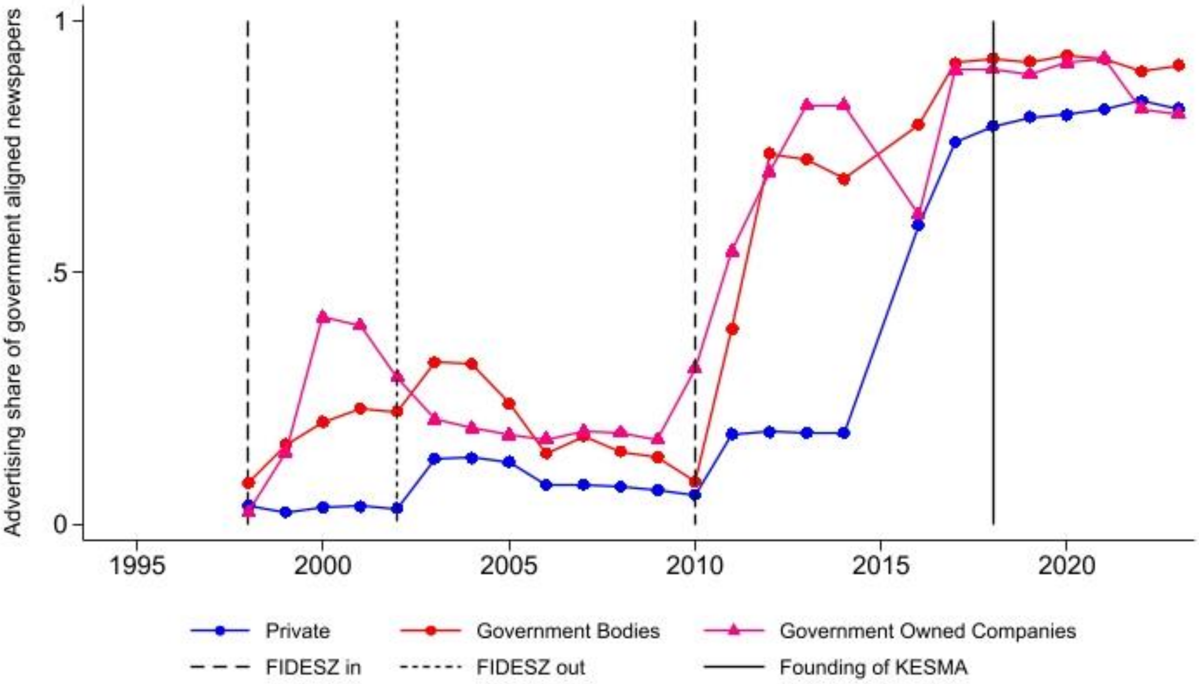
119. The Hungarian Government's reasoning underpinning the introduction of the Bonus Act reaffirms this – according to the Government, the discount system in effect prior to the Bonus Act distorted the market precisely because – in the Government's words - the advertising agencies mainly pursued their own interests in choosing the advertising publishers, instead of

the interests of the Government advertiser.[27] This argument is without merit, as the distortion can occur if, and only if, the advertising investments are not made in line with the market economy operator principle.

11) Patterns of advertising observed across Government bodies and Government-owned firms would be sufficient evidence to prove imputability

120. The Economic Report has further shown that the patterns of advertising observed across Government bodies and Government-owned firms would be sufficient evidence to prove imputability. Professor Kühn finds an alignment of selectivity between Government bodies and Government-owned enterprises, which demonstrates directly that advertising is allocated according to the preferences of the Government of the day.

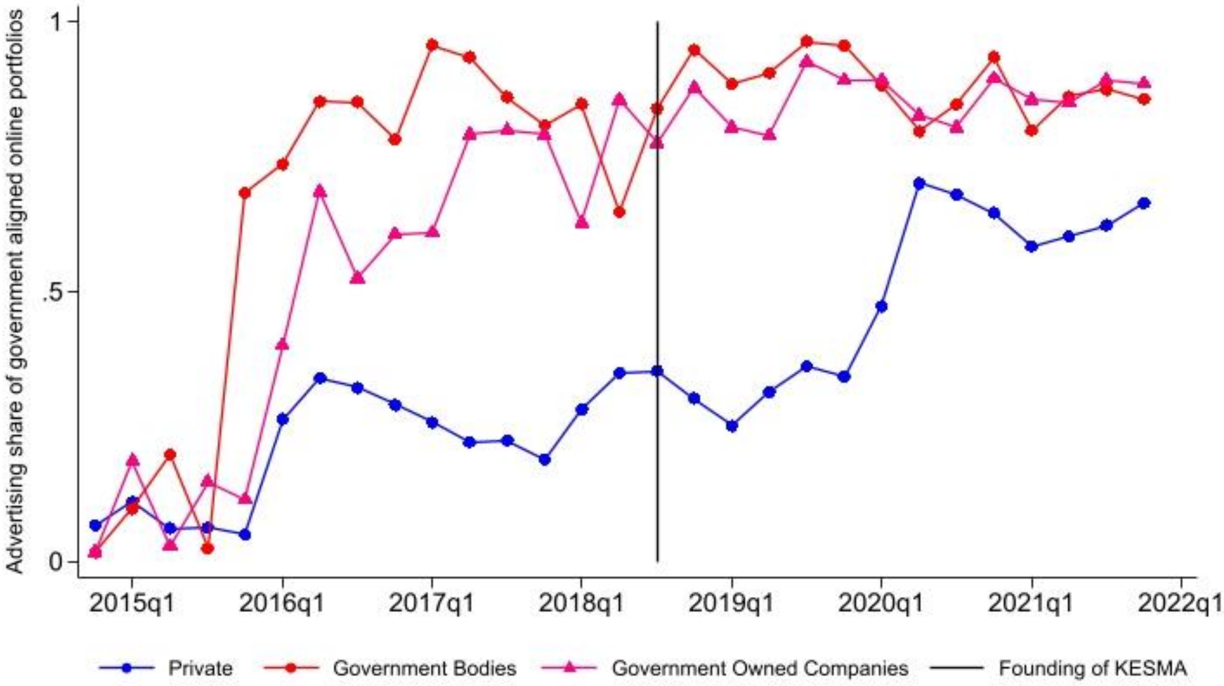
Figure 23: The Share of Advertisement by Government Bodies and Government owned Firms in Government-aligned newspapers



[27] 2015.évi LXXII. törvény indokolása Magyarország 2016. évi központi költségvetésének megalapozásáról (**Explanatory Memorandum to Act LXXII of 2015 on the Foundation of the 2016 Central Budget of Hungary**):

> "*But the bonus system is harmful because of its market distorting effect. Advertising intermediaries favour publishers (sales houses) offering higher bonuses, i.e. they choose potential advertising space on the basis of their own interests and not necessarily on the basis of advertisers' expectations; thus the spending of funds from the advertiser is determined by the interests of the advertising intermediary and not primarily those of the advertiser, i.e. the advertiser. In the light of the above, the primary objective of the Act is to make the activity of advertising intermediaries more transparent. To this end, the Act aims to abolish the bonuses (reimbursements) received by advertising intermediaries by amending Act XLVIII of 2008 on the Basic Conditions and Certain Restrictions of Economic Advertising Activities*"

Figure 24: The Share of Advertisement by Government Bodies and Government owned Firms in Government-aligned online portfolios



121. The high degree of coordination is obvious in the graphs above. As Professor Kühn points out, it appears impossible that this degree of coordination could have occurred without coordination by the Government. These patterns of advertising across Government bodies and Government-owned firms would be sufficient evidence to establish imputability even if formally an appropriate auction mechanism were used.

12) **<u>Auction mechanism does not comply with EU Public Procurement Rules</u>**

122. As set out in the previous section, imputability to the state is already guaranteed through:

a) the special characteristics of advertising markets (which preclude advertising agencies from being residual claimants of the benefits from the transaction, and render them nothing more than agents of the Government), and

b) conclusively confirmed through the empirical evidence on advertising in Hungary, including alignment between Government bodies and Government-owned enterprises.

123. As such, the review of public procurement processes designed by the Hungarian Government to allocate advertising is not even necessary to demonstrate imputability. **<u>Imputability is established even if, formally, an appropriate auction mechanism – one that complies with the EU Public Procurement rules - was used</u>**.

124. For completeness, we demonstrate that the public procurement mechanism is nevertheless such that it does not comply with the procedure that could, in principle, guarantee lack of imputability. The formal criteria imposed by the EU Public Procurement rules - including

transparency, non-discrimination and competitiveness – are violated to the extent that disqualifies these auction mechanisms (even if the contracts were not agency contracts).

125. When a transaction concerns the sale and purchase of goods and services, it is well-established that a **competitive, transparent, non-discriminatory and unconditional** tender procedure will evidence compliance of that transaction with market conditions, and therefore eliminate state aid concerns.[28]

126. The Commission Notice on the concept of State aid provides that complying with the procedures mandated by the EU Public Procurement Directives can be considered sufficient to meet the requirements of a competitive, transparent, and non-discriminatory tender procedure, as long as all the conditions for the use of the respective procedure are fulfilled.[29] The specific paragraph 84 (ii) of the Notice provides:

> *"(ii) where it concerns the* ***sale and purchase of*** *assets, good and* ***services*** *(or other comparable transactions) carried out through a* ***competitive, transparent non-discriminatory and unconditional tender procedure****."*

127. A tender has to be sufficiently well-publicised, so that all potential bidders can take note of it. Non-discriminatory treatment of all bidders at all stages of the procedure and objective selection and award criteria specified in advance of the process are indispensable conditions for ensuring that the resulting transaction (for the advertising service in this case) is in line with market conditions. To guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively.[30]

128. Crucially, Article 18 of the Directive 2014/24 ("*Principles of procurement*") prohibits contracting authorities from *artificially narrowing the competition*, in addition to imposing requirements of equality and proportionality.[31] Article 18 provides:

> *"Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.*
>
> *The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators"* (emphasis added)

129. The principle of equal treatment requires that "*the rules of the game must be known to all potential tenderers and must apply to them all in the same way*",[32] and "*an exclusion of one group of potential tenderers […] to the benefit of another group of tenderers is only permissible if those two groups of potential tenderers are not in similar or comparable situations or if the difference in treatment is objectively justified*".[33]

[28] Para 84 and 85, Commission's Notice on the Notion of State Aid
[29] Para 73, State Aid SA.47650 (2017/FC) – Germany https://ec.europa.eu/competition/state_aid/cases1/202416/SA_47650_E0A5F58E-0100-C08B-ACEE-731D81BBDFFA_224_1.pdf
[30] State Aid SA.47650 (2017/FC) – Germany https://ec.europa.eu/competition/state_aid/cases1/202416/SA_47650_E0A5F58E-0100-C08B-ACEE-731D81BBDFFA_224_1.pdf
[31] Article 18, DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024
[32] Opinion of AG Tanchev in Case C-598/19, para 66
[33] Opinion of AG Tanchev in Case C-598/19, para 67

130. The principle of proportionality requires that *"[…] the imposition of the additional requirements are appropriate means of achieving the legitimate objectives pursued by the Member State […]"* and that *"those requirements do not go beyond what is necessary to achieve those objectives"*.[34]

131. Finally, and as set out above, the prohibition on artificially narrowing competition requires that procurement shall not be made with the intention of artificially narrowing competition. Competition will be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.[35]

132. A tender will also fail to establish conformity of a transaction with market terms where only one bidder participates – precisely because there is no way to evaluate whether the market price corresponds to the best (binding and credible) offer. Paragraph 93 of the Commission's Notice on the Notion of State Aid provides:[36]

> *"Using and complying with the procedures provided for in the Public Procurement Directives can be considered sufficient to meet the requirements above provided that all the conditions for the use of the respective procedure are fulfilled.*
>
> *<u>This does not apply in specific circumstances that make it impossible to establish a market price</u>, such as the use of the negotiated procedure without publication of a contract notice.* (emphasis added)
>
> *<u>If only one bid is submitted, the procedure would not normally be sufficient to ensure a market price, unless either</u>*
>
> *(i) there are particularly strong safeguards in the design of the procedure ensuring genuine and effective competition and it is not apparent that only one operator is realistically able to submit a credible bid or*
>
> *(ii) public authorities verify through additional means that the outcome corresponds to the market price."*

133. In the following paragraphs, we demonstrate that the Hungarian Government's use of public tenders to appoint advertising agencies, and to ultimately place advertisements in various media outlets, fails to meet all requirements of an equal, transparent, non-discriminatory and unconditional tender procedure. As we show, it is of no defence to Hungary that centralisation of the public procurement sphere is permitted under the EU public procurement rules.[37] Indeed, when implemented correctly (as in many other EU Member

---

[34] Opinion of AG Tanchev in Case C-598/19, para 71
[35] Opinion of AG Tanchev in Case C-598/19, para 76
[36] See Para 93, Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union
[37] Paragraph (59) of the Preamble to the Directive 2014/24 provides:

> *"There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting authorities involved or by volume and value over time.*
>
> ***<u>However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for SMEs</u>.***"

States), centralisation of the public procurement activities can reduce administrative burdens and costs alike. This is however not the case in Hungary.

13) Mandatory Procurement Law (NKOH)

134. In 2014, the Hungarian Government passed the new law which centralised procurement activities related to communication services of all public bodies and all state-owned companies. For that purpose, a new body - NKOH (National Communications Office) – was set up.[38] NKOH is part of the Prime Minister's Cabinet Office.[39] Its task is to exercise direct oversight over all communication related procurement activities of all public bodies and state-owned entities in Hungary. Since 2014, no public institution or state–owned entity is allowed to go out to the market and procure advertising services without first notifying NKOH. In 2020, the 2014 law was further amended to ensure that virtually every single media activity falls in scope of NKOH powers.[40]

135. **The two step tendering system:**

a) Step 1. NKOH, as the central Government unit holding exclusive competence to oversee procurement of all media activities of public bodies and state-owned entities, concludes framework agreements with the successful advertising agency or agencies. The first step involves a competition for framework agreement only. The framework agreement between NKOH and the successful tenderers does not therefore award any money or concrete tasks to advertising agencies. It merely determines the pool of advertising agencies who are subsequently eligible to bid for contracts with specific units of the Government / public administration in Hungary. NKOH may determine the number of the winners in the contract notice, with whom the framework agreement is concluded. This number can also be only one, meaning, that there is one single winner, which eliminates competition in Step 2.

b) Step 2(a). As set out above, since 2014, no public body or state-owned entity in Hungary is able to issue an individual public tender whenever a new project/good/service is required. Instead, public bodies and state-owned entities must notify their procurement need to the NKOH. Once NKOH receives the notification, NKOH has three broad options:

   i. NKOH can oblige the public body (or state-owned entity) to call for the services from the existing framework agreement NKOH has concluded pursuant to Step 1, or

   ii. NKOH can issue a separate public tender for the task notified to it by the public body, or

   iii. NKOH can return the notification back to the public body (or state-owned entity) for implementation under its responsibility and discretion

---

[38] The Government Decree 247/2014 (X. 1.) on centralised public procurement of communications

[39] NKOH has been under the supervision of Antal Rogan, who is at present a Minister of the Prime Minister's Cabinet Office, and was added to the sanction list of the US Treasury's Office of Foreign Assets Control on 7th January 2025 for his involvement in various corruption cases in Hungary. https://home.treasury.gov/news/press-releases/jy2773

[40] Government Decree 162/2020 (IV.30.) on the status of the National Communication Office and on Government communication procurement, link: https://net.jogtar.hu/jogszabaly?docid=a2000162.kor

c) Step 2(b). Once the public body (or state-owned entity) concludes the contract with the specific advertising agency pursuant to Step 2(a), the public body / state-owned entity can place an order for a specific task. No separate contract is therefore created at Step 2(b) – instead, an order ("call-off") is placed on the basis of an existing contract already concluded at Step 2(a).

136. Step 1, Step 2(a) and Step 2(b) can be therefore summarised as follows:

a) Step 1: NKOH **(not an actual buyer)** concludes the framework agreement with the successful advertising agency
b) Step 2(a):The actual buyer (public body or state-owned entity) concludes the contract with the advertising agency based on the framework agreement
c) Step 2(b): The actual buyer places an order for a specific task, drawing from the contract concluded at Step 2(a).

The conditions of "Step 1" tender

137. A number of irregularities govern the tenders called by NKOH (i.e., "Step 1" tenders awarding framework agreements that qualify advertising agencies to bid for concrete projects).

138. First, since at least 2015, framework agreements have consistently been assigned - almost exclusively - to advertising agencies owned by individuals with close ties to the Hungarian Government. Since 2018, only two advertising agencies owned by the same individual have been successful at NKOH tenders for framework agreements. These two agencies won the tenders as a consortium.

(i) 2015

139. As an example, in August 2015, NKOH announced a tender for the framework agreement worth 25 billion HUF (approx. 83.3 million EUR). Three advertising agencies were awarded framework agreements, two of which were closely linked to the Fidesz Government through personal ties:[41]

i. Csaba Csetényi, businessman related to Antal Rogán, Head of Cabinet of the Prime Minister (his companies: **HG360** - later **Network 360, Affiliate Network**);
ii. Tibor Kuna, businessman related to Péter Szijjártó, Minister of Foreign Affairs and Trade (his companies are **Trinity International** and **Young & Partners**);
iii. Mindshare is independent and owned by the international WPP company.

(ii) 2017

140. Similar patterns governed the 2017 tender, where there were again three winners:

a) the company of Csaba Csetényi (**Affiliate Network**)
b) companies of Tibor Kuna (**Trinity and Young & Partners**)
c) companies of Gyula Balásy (**New Land Media/Lounge Design**)

[41] How did the Orban-Simicska media empire function? Kreativ.hu, April 9, 2018. http://kreativ.hu/cikk/how_did_the_orban_simicska_media_empire_function

Previously, these three media agencies (all close to the Government)[42] were not well-known companies in the Hungarian market. Before the NKOH framework agreement concluded, they had no significant market share. The turnover of the consortium participants (Csetényi and Kuna in 2015, Balásy at the very end of 2016) started to increase when they signed a framework agreement with NKOH. [43]

(iii) Since 2018

141. Finally, since 2018, the two advertising agencies owned by Gyula Balásy ('the Balásy Agencies" or "Balásy Companies") - New Land Media Kft and the Lounge Design Kft - have been the sole winners of the tenders for NKOH framework agreements with joint bids. This is illustrated in the table below. The number of companies contracted by NKOH decreased from tender to tender, leaving the two companies owned by Gyula Balásy as the only winners.[44]

Tenderről-tenderre szűkült az NKOH-val szerződött cégek köre, végül a Balásy Gyula tulajdonában lévő konzorcium maradt egyedüliként

Tender alapján megkötött szerződés időtartama	Tender keretösszege	Nyertes(ek)
2015.08.10-2017.08.10.	25 000 000 000 Ft	1.Egyesült Reklám Konzorcium (tagjai: HG 360 Reklámügynökség Kft. és Affiliate Network Kft.) 2.Trinity-SPRINT Konzorcium (tagjai:Trinity International Communications Kft. és SPRINT Nyomdaipari Szolgáltató és Ügynöki Kft.) 3.Mindshare Médiaügynökség Kft. - HAB Advert Kommunikációs Ügynökség Kft. - Goodwill Communications Kft. Konzorcium
2016.11.25-2017.11.25	25 000 000 000 F	1.New Land Media Kft és Lounge Design Kft. 2.Network 360 Kft. és Affiliate Network Kft. 3.Trinity International Communications Kft. és SPRINT Kft. és Young and Partners Kft.)
2018.06.19-tól max 36 hónap	30 000 000 Ft	1.New Land Media Kft és Lounge Design Kft. 2.Network 360 Kft. és Affiliate Network Kft. 3.Trinity International Communications Kft. és SPRINT Kft. és Young and Partners Kft.)
2019.12.20-tól max 36 hónap	50 000 000 Ft	1.New Land Media Kft és Lounge Design Kft. (konzorcium)
2022.05.11-től max 36 hónap	75.000.000 Ft	1.New Land Media Kft és Lounge Design Kft. (konzorcium)

Forrás: NKOH

ATLATSZO

142. Although no contract with the actual buyer (a public body or state-owned entity) is awarded pursuant to Step 1 (Step 1 merely determines the pool of advertising agencies subsequently eligible to bid for contracts with the actual buyers), it appears on the facts that

[42] See more information of the companies and their political links to Fidesz Government in Dynamics of an Authoritarian System: Hungary 2010-2021, authors: Maria Csanádi, Márton Gerő, Miklós Hajdu, Imre Kovach, Mihály Laki, István András Tóth, CEU Press 2022, https://bit.ly/3UrQOX8
[43] https://444.hu/2017/06/14/milliardokat-adunk-ezeknek-az-embereknek-hogy-kilugozzak-az-agyunkat
[44] https://atlatszo.hu/kozpenz/2024/02/15/osszehangolt-gepezet-iranyitja-a-rogani-propagandahivatal-milliardos-kommunikacios-tendereit-egyetlen-nyerteshez/

Step 1 is used by the Government to exclude a number of potentially qualified advertising agencies from the process. We illustrate this with the following two examples:

a) the first ever "Step 1" framework agreement tender from 2015 (https://ted.europa.eu/hu/notice/-/detail/143978-2015) (winner pool: 3)
b) the most recent "Step 1" framework agreement tender from 2022 (https://ted.europa.eu/hu/notice/-/detail/152417-2022) (winner pool: 1)

143. **2015 Tender**. Selection (suitability) criteria in relation to the 2015 tender included:

economic suitability criteria *"the tenderer should have a total* ***net revenue of at least HUF 1,000,000,000*** *from activities corresponding to the subject of the procurement (communication services) over the three business years preceding the publication of the call for tender"*

technical suitability criteria (references)

"the tenderer should have the following references within the 3 (three) years (36 months) preceding the publication of the call for tender:

At least 2 references for qualitative and/or quantitative public opinion research, each with a net value of at least HUF 2,000,000;
b) At least 2 references for communication strategy planning, each covering a period of at least 1 year within the examined 36-month period (the entire 1-year period must fall within the 36 months), with each reference exceeding a net value of HUF 5,000,000;
c) At least 2 references for branding (identity design), each with a net value of at least HUF 4,000,000;
d) At least 2 references for the design and implementation of integrated, original (non-adapted) advertising campaigns, at least one of which exceeded a net value of HUF 10,000,000;
e) At least 1 reference for publication design, editing, and production, with a net value of at least HUF 2,000,000;
f) At least 2 references for PR agency services, each exceeding a net value of HUF 4,000,000, and at least one of which was for a state-owned client and/or a budgetary body as defined in Section 5 (1) of Government Decree No. 247/2011 (X.1.);
g) At least 2 references for online communication and/or social media services, each exceeding a net value of HUF 2,000,000;
h) At least 2 references for the development and operation of websites, each exceeding a net value of HUF 2,000,000, and at least one of which was for a state-owned client and/or a budgetary body as defined in Section 5 (1) of Government Decree No. 247/2011 (X.1.);
i) At least 1 reference for content production tasks, with a net value exceeding HUF 2,000,000;
j) At least 2 references for printing and production tasks, each exceeding a net value of HUF 5,000,000;
k) At least 2 references for film production, at least one of which exceeded a net value of HUF 5,000,000;
l) At least 1 reference for completed media planning and media buying services, with a net value of at least HUF 500,000,000;
*m) At least 1 reference for the provision of communication tasks with a minimum implementation period of 12 months, **involving communication tasks related to at least 250 organizations and/or business entities**, in accordance with Annex 1 of Government Decree No. 247/2014 (X.1.)"*

	<u>*technical suitability criteria (experts):*</u> M.2. Among the experts intended to be involved in the performance of the contract, the following are required: *At least **1 research director** with higher education qualifications and at least 3 (three) years of professional experience in public opinion research;* *At least 1 research specialist with higher education qualifications and at least 3 (three) years of professional experience in public opinion research;* *At least 1 graphic designer with at least 3 (three) years of professional experience in branding (identity design) and/or publication design;* *At least 1 creative specialist with higher education qualifications and at least 3 (three) years of professional experience in developing communication campaigns;* *At least 1 press relations manager with higher education qualifications and at least 3 (three) years of professional experience in managing press relations for communication campaigns;* *At least 1 content production specialist with higher education qualifications and at least 3 (three) years of professional experience as an editor;* *At least 1 online specialist with higher education qualifications and at least 3 (three) years of professional experience in online campaign management;* *At least 1 social media specialist with secondary education qualifications and at least 3 (three) years of professional experience in social media campaign management;* *At least 1 production specialist with higher education qualifications;* *At least 1 media planner with higher education qualifications and at least 3 (three) years of professional experience in media planning;* *At least 1 media buyer with higher education qualifications and at least 3 (three) years of professional experience in media buying;* *At least 1 copywriter with higher education qualifications and at least 3 (three) years of professional experience in public relations (PR);* *At least 1 client relationship manager with higher education qualifications and at least 3 (three) years of professional experience in client relations;* *At least 1 client relations associate with secondary education qualifications;* ***At least 1 project manager with higher education qualifications who has professional experience in executing communication tasks (as defined in Annex 1 of Government Decree No. 247/2014 (X.1.)) involving at least 250 organizations and/or business entities over a period of at least 1 year."***

	Tender guarantee: ***20.000.000 HUF*** Award criteria: the tenderers also needed to prepare a detailed study, which the Contracting Authority evaluated based on an unknown methodology. A disproportionately high weighting was attributed to this award criteria, compared other requirements.

144. **2022 Tender**. Selection (suitability) criteria in relation to the 2022 tender included:

	<u>*economic suitability criteria*</u> *"the tenderer should have a total **net revenue of at least HUF 2,000,000,000** from activities corresponding to the subject of the procurement (communication services) over **the three business years** preceding the publication of the call for tender"*

<u>*technical suitability criteria (references)*</u> *The tenderer should have the following references within the 3 years preceding the publication of the call for tender, where:* *At least 2 contracts included tasks related to communication strategy planning and consultancy, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included tasks for creative agency services, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included tasks for PR agency services, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included tasks for online agency services, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included tasks for production activities related to communication tasks, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included tasks for media agency services, of which at least 1 was connected to Governmental communication tasks; and* *At least 2 contracts included event management tasks for multi-day events, of which at least 1 was connected to Governmental communication tasks.* *The entity fails to demonstrate the fulfillment of* ***at least 10 individual contracts executed under a framework agreement or other framework-like contract with a duration of at least 6 months, aimed at communication tasks and related services, properly fulfilled within the 3 years preceding the publication of the call for tender, where:*** *At least 6 contracts involved tasks from at least 3 of the following areas: communication strategy planning and consultancy, creative agency tasks, PR agency tasks, online agency tasks, production tasks, media agency tasks, and event management tasks, and* *At least 4 contracts involved tasks from at least 4 of the above areas, carried out simultaneously.*

Tender guarantee: 20.000.000 HUF

145. The scope and the extent of the tasks set out in the 2015 tender notice, coupled with the unprecedentedly restrictive selection criteria (including the references), forced the main players of the market to form consortiums.[45] As a result, 3 tenders were submitted,[46] so every consortium was awarded a framework agreement (because NKOH had set a pool of 3 winners). It meant that there was effectively no competition in Step 1, but because of the multiple winners, the chance remained for a competitive setting in Step 2. Unlike in 2015, in 2022 NKOH did not apply any pool, so there was only a single winner - the consortium of New Land Media Kft. and Lounge Design Kft (also referred to as Balásy's Agencies throughout this Complaint).

---

[45] As set out above, the 2015 the following three consortiums won the 2015 tender:

a) Egyesült Reklám Konzorcium (members: HG 360 Reklámügynökség Korlátolt Felelősségű Társaság and Affiliate Network Korlátolt Felelősségű Társaság
b) Trinity-SPRINT Konzorcium (members: Trinity International Communications Kft. and SPRINT Kft)
c) Mindshare Médiaügynökség Kft. - HAB Advert Kommunikációs Ügynökség Kft. - Goodwill Communications Kft. Konzorcium (members: Mindshare Médiaügynökség Korlátolt Felelősségű Társaság, HAB Advert Kommunikációs Ügynökség Korlátolt Felelősségű Társaság; Goodwill Communications Kft)

[46] https://ted.europa.eu/en/notice/-/detail/315436-2015

146. The complex criteria of first tenders undoubtedly narrowed competition in a way that breached Article 18 of the Directive and these procedures were used as means to exclude many potential bidders, who – because they were unable to participate in earlier framework agreements – lost significant revenues and the ability to supply references. The number of suitable bidders decreased over time, as only references no older than 3 years could be taken into account. The absence of other bidders early on made it possible to incorporate less restrictive criteria in subsequent tenders, while still retaining the ability to exclude the majority of other market players. This resulted in an unhealthy and unprecedented concentration of the public advertising market in the hands of one single consortium.

The conditions of "Step 2 (a-b)" tenders

147. Unlike Step 1, Step 2 is where the contract between the advertising agency and a concrete public undertaking / state-owned entity ("actual buyer") is concluded.

148. As set out above, once a public body or a state-owned entity has notified a concrete procurement need to NKOH, NKOH will either:

i. **Option 1:** oblige the public body (or state-owned entity) to call for the services from the existing framework agreements NKOH has concluded pursuant to Step 1, or

ii. **Option 2**: issue a separate public tender for the task notified to it by the public body, or

iii. **Option 3**: return the notification back to the public body

149. Although "Step 2" is where competition for the actual contract takes place, there may be little to no competition whenever NKOH directs the public body to call for the services from the existing framework agreements ("Option 1" above). It is clear therefore how the result of Step 1 process (especially in the case of single winner frameworks) has a direct negative effect on the degree of competition that is generated at Step 2.

150. In particular, since 2020, no other advertising agency has been successful at Step 1, other than the two Balásy Agencies. To the extent that a public body is directed by NKOH to call for the services from the existing framework agreements, it is unlikely to be able to procure genuinely competitive bids, in particular since 2020, where the only two winners of the framework agreements are owned by the same individual.

151. This is reflected in the data on tenders for the actual contracts ("**Step 2 tenders**"). The data shows that for the vast majority of the tenders, there is only one bidder (the winner). This means it is not a tender that guarantees a market price, and therefore, the absence of state aid.

152. The table below presents the share of contracts in which Balásy companies were the sole bidders, expressed as a percentage of all contracts won by Balásy Companies. Consistently since 2019, Balásy Companies have faced no competition in >90% of contracts. In the first seven months of 2023, Balásy companies won a total of 80 contracts, all of which had no competing bids (see Two Communication Companies in the Hungarian Public Procurement Market 2012-2023[47] Table 3.1, page 9).

[47] Two Communication Companies in the Hungarian Public Procurement Market 2012-2023, research paper by the Corruption Research Center Budapest, February 2024, link: https://www.crcb.eu/wp-content/uploads/2024/02/2024_research_notes_01_190224_03.pdf

Table 3.1.: Share of Contracts with Single Bid in Contracts Won by Balásy's Companies from January 2012 to July 2023.

Year	Number of contracts won	Number of contracts won where only Balásy's companies submitted bids	Share of single bid, %
2012	1	0	0.0
2013	1	1	100.0
2014	2	0	0.0
2015	3	2	66.7
2016	3	1	33.3
2017	37	3	8.1
2018	88	31	35.2
2019	128	125	97.7
2020	105	98	93.3
2021	150	140	93.3
2022	132	123	93.2
2023	80	80	100.0
Total	730	604	82.7

153. The "single bidder" risk associated with contracts won by Balásy's companies is therefore exceptionally high in tenders conducted by the NKOH, reaching 0.83 on a scale of 0 to 1. This value indicates that in NKOH-announced tenders where Balásy's companies won, they were the single bidders in 83 out of 100 tenders.[48] Consequently, Balásy's companies were awarded 83 percent of their contracts without facing <u>any</u> market competition.

<u>Level of discounts and compensation schemes under the tender</u>

154. Once Step 2 is complete (the contract has been awarded by the actual buyer to the advertising agency), the advertising agency must go out to the market and obtain the service from one or more media outlets.

155. However, as we explained above, Step 2 itself is divided in two stages (2(a) and 2(b)). Although Step 2(a) is when the contract award takes place (i.e., the award is made by the actual buyer to the advertising agency), Step 2(a) merely determines the overall value of that contract. The specific tasks and their volume remain unknown at the end of Step 2(a), and are only determined during the so-called call-off orders (Step 2(b)).

156. Therefore, while the level of discount is a critical factor in the selection of the winning advertisement agency at Step 1, we should remember that Step 1 framework agreements contain unit prices *only*.

[48] *Ibid*

157. The specific quantities and tasks are not determined until Step 2(b). The implication of this is that a unit price (which is of critical importance to win Step 1 competition) becomes entirely irrelevant at Step 2(b). At Step (2(b), advertising agencies can manipulate the specific tasks and their quantity in a way that guarantees highest revenue. In other words, if the advertising agency knows that the unit prices do not matter that much, they can offer seemingly competitive prices at Step 1 only to win the framework agreements over and over again. Any argument that advertisement agencies compete on the level of discounts they obtain from the sellers of advertisement services cannot be sustained in light of the process set out at Steps 1 – 2(a-b).

Conclusion on why imputability to the state is not negated by the use of public procurement mechanism

158. As demonstrated by the Economic Study, imputability to the state is guaranteed through (i) the special characteristics of advertising markets, and (ii) the empirical evidence showing alignment between Government bodies and Government-owned enterprises.

159. The review of public procurement processes is therefore not necessary to demonstrate imputability.

160. Nevertheless, the advertising services themselves (i.e., services purchased from media outlets) are not tendered. Although the advertising agencies are engaged via a two-step auction process, the additional evidence shows that the manner in which those auctions are run casts significant doubt on their compliance with a truly competitive, transparent and fair tender procedures, as mandated by the EU Public Procurement Directives.

161. In particular, Step 1 tenders (the outcome of which is crucial for the degree of competition at subsequent stages of the award procedure) are crafted so that many potential bidders are excluded from the tender procedure. Article 18 of the Directive 2014/24 provides:

> "*the design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or **of artificially narrowing competition*** (emphasis added). *Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators*"

162. Step 1 and Step 2 are designed and run in a way that clearly falls foul of the prohibition found in Article 18. Any claim that the auction mechanism is run in a fair, transparent and equal manner would not survive the European Court's scrutiny. The Court has previously criticised tender criteria where the direct effect is to benefit one particular undertaking, whilst having the effect of excluding all other undertakings capable of providing the service. In Case T-454/13, at paras 243 - 248, the General Court observed: [49]

> "*In the third place, and by extension of what is stated in paragraph 242 above, it must be held that, as is apparent from recitals 174 to 177 of the contested decision, a series of factors have indisputably discouraged or even prevented potential candidates from participating in the call for tenders.*
>
> *Third, it is clear that certain technical constraints have also limited the number of candidates who are likely to submit a bid in the call for tenders, including the fact that the*

[49] See paras 243 – 248, Case T-454/13, Société nationale maritime Corse Méditerranée (SNCM) v European Commission

vessels had to meet specific technical requirements in order to be able to manoeuvre in some of the Corsican ports. For example, as stated in footnote 107 of the contested decision, in 2007 the port of Bastia did not allow the manoeuvring of vessels over 180 metres long. <u>This constraint, coupled with the requirement of a high minimum number of linear meters in the PSDC's tender specifications for freight transport, implied the construction of almost tailor-made vessels similar to some of SNCM's vessels, such as the Paglia Orba and the Pascal Paoli. However, as noted in footnote 109 of the contested decision, the cost of vessels likely to meet the conditions of those tender specifications was particularly high.</u>

In addition to those elements, it was stipulated that vessels intended for public service could not be more than 20 years old, with the possibility of a derogation for 2007 and 2008, <u>which benefited SNCM directly whilst having the effect of excluding five vessels from the Corsica Ferries fleet available for the operation of the PSD</u>, as explained very convincingly by the Commission in its reply to one of the Court's written questions" (emphasis added)

163. The tender criteria governing Step 1 (including limiting references to the previous 3 years) is precisely what happened in the case above i.e. criteria prevented potential candidates from participating in the call for tenders.[50]

164. Moreover and as explained above, once the advertising agency is awarded a concrete media task, no best-value obligation is imposed on in the contract for that task. Quite to the contrary, the 2015 Bonus Act passed by the Hungarian Parliament has shifted the financial risk squarely on the Hungarian Government rather than on the agencies, taking away any relevant competitive constraints on the undertakings. This means that these companies operate under fundamentally different circumstances than any other undertaking operating in the same relevant market.

165. Finally, we draw the Commission's attention to report prepared by the Hungarian Government on request by the European Commission to measure the performance of the public procurement system. The first report [51] was published in February 2023 - Annex 5 of the report, NKOH stated that:

- It generally does not perform market analysis, but there is precedent for it
- It does not have any methodology for market engagement prior to the tenders
- It does not compare the tender prices with the actual market prices
- It is unable to report any savings that could be attributed to the centralisation of the public procurement system[52]

14) <u>Legal Requirements for State aid</u>

166. According to Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"), "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market". Looking at the evidence contained in the Economic Study, there is no doubt that there is an effect on trade between Member states.

[50] The 3 years period is determined by a Government decree.
[51] https://ekr.gov.hu/portal/hirek/8798092096856
[52] Ibid (rows 15, 18, 19, 21.)

We also note that the investment interests of Axel Springer were directly affected by the actions of the Fidesz administrations.

167. There are a number of cumulative elements for a finding that a measure constitutes State aid within the meaning of Article 107(1) TFEU. The measure must cumulatively:

a) Confer (i) an advantage (ii) in a selective manner (iii) to certain undertakings
b) That is granted by the State (the measure must be imputable to the State)
c) In a way that distorts competition and affects trade between Member States.

(a) Confer (i) an advantage (ii) in a selective matter (iii) to certain undertakings

168. An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking could not have obtained under normal market conditions, in the absence of State intervention, or a relief from costs due.[53]

169. As Professor Kühn shows, investments in advertising space should normally be made so that the marginal effect of reaching people is the same. That will generally be proportional to the audience size - as we show from the advertising practices of private advertisers in newspapers – see the Counterfactual. If, for a given readership, a Government is spending a higher share, this implies that the average price paid for audience is higher at that outlet compared to market conditions. Therefore, the advertising quantities and prices spent by the Government on audience exceed the market level.

170. The conclusion remains true even if the expenditure is notional (i.e., it is based on list prices). Since the focus in Professor Kühn's analysis is on proportional changes, list prices will not distort the comparison as long as actual advertising prices are at a fairly constant discount from the list prices. The data shows that this must have been the case because private advertising remains proportional to audience and Government advertising remains proportional to private advertising in case of non-Government-aligned media outlets. This is not only true in the aggregate, but also at the individual level and demonstrated by systematic evidence that Government advertising changed dramatically when the alignment of a newspaper with Government policies changes, either through a change in Government or a change in newspaper ownership.

171. From the period of Fidesz I, Government advertising in Hungary deviated radically from the private market that generates advertisement proportional to readership.

(b) Granted by the State, using State Resources

172. The evidence contained in the Economic Study of Professor Kühn points to a direct imputability of the Government advertising expenditure to the Hungarian State.

173. For completeness we have to deal with both the actions of the Hungarian State and the actions of the two Gyula Balásy companies **Lounge Design** and **New Land Media** as direct agents of the Hungarian State.

[53] Para 66 and 68, Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01)

174. Our conclusions are based on the fact that the Economic Study shows that neither agency is acting in a market-based way and the only viable conclusion is that those agencies are acting as mere agents of the Hungarian Government. The provisions of the Bonus Act 2015, and significant doubts concerning the public procurement procedures deployed to appoint those agencies support the data conclusions.

175. To quote Stardust Marine again: *"[23] It is settled case-law that no distinction is to be drawn between cases where the aid is granted directly by the State and those where it is granted by public or private bodies which the State establishes* ***or designates with a view to administering the aid.***

176. Where a measure is adopted by **a public undertaking**, imputability may be inferred from a set of indicators arising from the circumstances of the case and the context in which the measure was taken, such as:

a) the fact that the body in question could not take the contested decision without taking account of the requirements of the public authorities
b) the presence of factors of an organic nature which link the public undertaking to the State, or
c) the integration of the public undertaking into the structures of the public administration.[54]

177. Private entities are presumed to act rationally and, in their self-interest, i.e., they expect a payoff of at least equivalent value in return to the funding they provide.

178. Recent European case law has however clarified that a measure adopted by a private entity (in this case the two companies controlled by Mr Orbán's ally Mr Balásy - namely Lounge Design and New Land Media) will be imputed to the Government when that private entity is directed by the Government to undertake a certain action. In other words, imputability is present when the undertaking through which the aid is granted is not acting as an independent market actor but has to take account of directives issued by Governmental bodies.

179. The measure has to be adopted **under the actual influence or control of the public bodies i.e. that the advertising (media) agency instructed by the Government is not an independent market actor** (***Bank Tercas***).[55]

180. This has been developed further in a subsequent case involving provision of financing to airlines operating in the Italian island of Sardinia.[56] While the CJEU did not have to comment specifically on the imputability analysis, it would have upheld Commission's and GC's findings. This would have also been consistent with the Advocate General's proposition to dismiss the appellants' challenge to the finding of imputability as unfounded.[57]

181. The case concerned an Italian scheme under which airport operators in Sardinia received financing from Regional authorities for the development of air routes serving the island. Although the Regional authorities transferred financing to airport operators, the Commission concluded that the various measures constituted State aid to airlines, even in the absence of a direct relationship between (i) the Regional authorities and (ii) the airlines. The Commission reached this conclusion on the basis that the actions of private airport operators (who

---

[54] Commission's Notice on the Notion of Aid
[55] See para 26, Case C-425/19 P
[56] See Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA33983, Judgments of 13 May 2020, Volotea v Commission (T-607/17, EU:T:2020:180), and of 13 May 2020, easyJet Airline v Commission (T-8/18, EU:T:2020:182) and
[57] See para 43 of Advocate General's Opinion

negotiated and concluded relevant contracts with the airlines) were ultimately imputable to the Italian authorities:

> *"The mechanism put in place through Law 10/2010 provides that the Region is to transfer public funds to airport operators, which should, in turn, transfer them to airlines in accordance with the detailed specifications of the activity plans approved by the Region. The activity plans were designed and proposed in the first place by airport operators but the Region reviewed the plans, approved them, and determined the funding provided to the airport operator on that basis. Through the approval of the detailed activity plans, the Region determined precisely how each airport operator should allocate the funding received from the Region to airlines. As described in Section 2.7.3, the monitoring process put in place (which determines the payment of the last instalment to airport operators) also ensures compliance with those obligations"*[58]

182. For completeness, imputability is not negated even if the advertising allocations may not always be solely determined by the Government. Even if advertising agencies were left with certain latitude to negotiate the prices to be paid for the advertisement in individual media outlets (which is not the case due to the Bonus Act), or to determine the location of an advertisement from time to time, the evidence presented in the Economic Study demonstrates that the advertising placements are always conducted in the framework of mechanisms imposed by the Hungarian Government. Reference here is made to the Commission's analysis in Case **C 41/05** at para 311: [59]

> *"The Commission acknowledges that the exact amount of resources transferred to the beneficiaries does not solely depend on the clauses contained in the PPAs, which are imputable to the State, but also to periodic bilateral negotiations conducted by MVM with the generators. In fact, PPAs offer a certain latitude to the parties to negotiate the quantities of electricity actually purchased by MVM as well as certain components of the price, notably with respect to the calculation of the capacity fees, which as indicated in recital 356 depend on a number of factors and necessitate periodic adjustments. However, the negotiations on purchased quantities can never lead to quantities below the minimum guaranteed off-take level established in the PPAs. Similarly, negotiations on prices can only be conducted in the framework of the price-setting mechanisms enshrined in the PPAs, which are imputable to the State. The price negotiations thus did not call into question the principle of purchase obligation covering justified costs and a level of profit necessary for the operation of the power plant."*

State Resources

183. The imputability of a measure to the State and granting of an advantage directly or indirectly through State resources are two separate and cumulative conditions for State aid to exist.

184. It is well established that when a measure is administered by a public or private body established or appointed by the State to administer the aid (rather than financed directly by the State), it does not necessarily mean that the measure is not financed through State resources. Indeed, the appointment of advertising agencies as agents of the Government, with all the limits imposed on their ability to act as market-based actors, prevents these agencies

[58] See para 359, Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA33983

[59] See C 41/05, Commission Decision of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (notified under document C(2008) 2223), Para 311

from carrying out the arbitrages that might prove appropriate to minimise the amounts of resources spent for the purchase of advertisements.[60]

c) In a way that distorts competition and affects trade between Member States

185. Considering the evidence contained in the Economic Study, there is no doubt that there is an effect on trade between Member states. The patterns of advertising placement discussed in the Economic Study have considerably weakened foreign investment in the Hungarian media sector. For example, the investment interests of international media companies, such as Axel Springer or RTL were affected by the actions of the Fidesz administrations.

15) <u>Possible quantification of State aid and plea for recovery</u>

186. The Complaint and the Economic Study have demonstrated that, over the years, the successive Hungarian Governments (particularly those led by Fidesz) have channelled hundreds millions of Euros to various Government-aligned media outlets relative to the distribution by private advertisers. This constitutes unlawful (and potentially incompatible) State aid.

187. As is established by the case law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market.[61] The Courts have also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation.[62]

188. This objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored.[63]

189. For the period 2015-2023, the Economic Study has established that the total aid has amounted to **EUR 828,221,400** (**EUR 1,117,097,500**, including interest) across all three media channels (newspapers, online media, TV).

190. Recovery should cover the time from when the advantage accrued to the beneficiary, that is to say the date at which the aid was put at the disposal of the beneficiary, until effective recovery. Consequently, we ask the Commission that the total amount of aid to be recovered shall bear interest as of the moment that each aid was disbursed until the moment of its reimbursement. The total aid, split by each media channel, is summarised below:

---

[60] Para 317, Commission Decision of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (notified under document C(2008) 2223).

The Commission used this basis to conclude on the condition of State Resources.

"*This fact, together with the conclusion reached in recitals 315 and 316, leads the Commission to conclude that the condition of transfer of State resources has been present in the PPAs since 1 May 2004 and will be present as long as they are valid, independently of actual market conditions, <u>because they prevent MVM from carrying out the arbitrages that might prove appropriate to minimise the amounts of resources spent for the purchase of the electricity necessary to fulfil its needs</u>*"

[61] Judgment of the Court of Justice of 12 July 1973, Commission v Germany, C-70/72, ECLI:EU:C:1973:87, paragraph 13

[62] Judgment of the Court of Justice of 14 September 1994, Spain v Commission, joined cases C278/92, C-279/92 and C-280/92, ECLI:EU:C:1994:325, paragraph 75.

[63] Judgment of the Court (Sixth Chamber) of 17 June 1999, Belgium v Commission, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

Table: Total aid to Newspapers, Online Media and TV (EUR)

EUR	Newspapers	Online media	TV	TOTAL
Without interest	261,772,800	211,962,900	354,485,700	828,221,400
With interest	348,275,200	289,682,200	479,140,100	1,117,097,500

Table: Total aid to Newspapers, Online Media and TV (HUF)

HUF	Newspapers	Online media	TV	TOTAL
Without interest	90,571,860,000	71,548,988,000	120,434,938,000	282,555,786,000
With interest	137,611,139,000	114,459,749,000	189,318,735,000	441,389,668,000

191. This amount constitutes unlawful aid that is potentially incompatible with the internal market. As a result, we ask the Commission to recover the aid in order to re-establish the situation that existed on the market prior to its granting.

192. This quantification is likely to understate the true impact of the State aid on competitors. Media outlets have two sources of income, those being (i) advertising and (ii) subscriber income. A sudden drop in (i) would place significant pressure on the media outlet to either increase subscriber prices or to reduce the quality of its journalism in order to save costs to ensure survival.

193. This is especially the case in a rapidly shrinking media market in Hungary with a pattern of exit over time through failure or sale. As such, the State aid had a direct distorting effect on competition due to the selective market exit of Hungarian newspapers not aligned with the Government - often through a sale to pro-Government entities. This reduced the diversity of newspaper offerings over time in way that was most likely not apparent to readers and did not reflect their preferences.

194. As Professor Kühn concludes, it is therefore imperative for the restoration of competition that the state aid granted is returned to the state and that remedies are adopted to restore competition in the Hungarian media markets. Since the consolidation of media companies in KESMA was incentivized by the aid, a remedy requiring a divestiture of KESMA media assets should also be considered (in addition to the recovery of funds).

Limitation period

195. We also note the time limits imposed on the Commission by Article 17 of Regulation 2015/1589. While the Commission must observe the period of limitation of 10 years with regards to unlawful aid, any action taken by the Commission interrupts that limitation period, with the effect that the clock is reset (Article 17(2)). In that respect, it has been confirmed by the Commission's case practice that requests for information (or even the action of "forwarding of

the complaint to a Member State") constitute the relevant action taken by the Commission within the meaning of Article 17(2) of Regulation 2015/ 1589.[64]

196. Recovery is applicable – at the very least - to all unlawful aid granted by the Hungarian Government after February 2015. However, in so far as the Commission previously sent Requests for Information to Hungary relating to similar facts, the limitation period may have been interrupted. This is not known to the Complainant.

16) <u>Conclusions</u>

197. This complaint has established that the Hungarian State has not satisfied the principles in *Stardust Marine*. The tenders do not assist the Hungarian State, as they are conducted in breach of principles of equality, proportionality and against the prohibition on artificially narrowing the competition. Tender criteria are tailor made to benefit specific groups of undertakings, while having direct effect of excluding other bidders from participating in the tenders. There was never any best value obligation and the Bonus Act removed any residual ability by the advertising agencies to intermediate the purchase for profit. As such, the agencies are agents of the State and the burden to show that there is no State aid remains with the Hungarian Government.

198. The Economic Study from Professor Kühn clearly demonstrates that advertising allocations of <u>private</u> media are generally proportional to the audience reached – independently from political alignment of the media company (the Counterfactual).

199. This corresponds to conventional market forces where advertising spend should be approximately proportional to audience share. Hungarian Government advertising differs from a market allocation of advertising by selectively favouring Government-aligned media, thus conveying a selective advantage on media that publish views aligned with Government positions. Professor Kühn has shown that in all three media sectors (newspapers, online platforms, and TV) the MEOP has been systematically violated. The amount of state aid has been particularly high during the period the Complaint covers: 2015 to 2023. The violation of the MEOP is selectively targeted at media outlets that are Government-aligned with state aid arising when the newspapers become Government-aligned and disappearing when firms become unaligned with the Government. There is therefore clearly selective aid to these media outlets.

200. The economic analysis of data shows that no rational market-based actor would have behaved in this way over time. The only reasonable explanation is the fact that the Government used State advertising to confer State aid by way of an unlawful and selective financial advantage on certain media outlets using State funds.

201. The Commission, as Guardian of the Treaties, including the Treaty on the Functioning of the European Union and more specifically Art 107(1) TFEU is hereby asked to (i) investigate the existence of unlawful (and ultimately) incompatible State aid; and (ii) order the Hungarian State to recover the full amount of aid granted, at least from 2015.

---

[64] Commission Decision C/2024/1850 of 25 April 2024 on *State aid to public procurement platform Cosinex* (SA.47650), see para 2 and 164-166.