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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION  
POLICY

COMMISSION

**Notice published pursuant to Article 27(4) of Council Regulation No 1/2003 in Case COMP/38698  
— CISAC**

(Text with EEA relevance)

(2007/C 128/06)

**1. INTRODUCTION**

1. According to Article 9 of Council Regulation (EC) 1/2003 <sup>(1)</sup>, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

**2. SUMMARY OF THE CASE**

2. On 4 April 2003, Music Choice Europe plc ('Music Choice') filed a complaint against the International Confederation of Societies of Authors and Composers ('CISAC'). The complaint concerns a model contract for public performance rights between collecting societies that are members of CISAC. Earlier, on 30 November 2000, the RTL Group ('RTL') had filed a complaint against GEMA, the German collecting society which administers authors' rights in musical and cinematographic works on behalf of its members and third parties. RTL's complaint concerns the refusal of GEMA to grant a Community-wide licence to the RTL Group for all its music broadcasting activities. The cases, similar on substance, have been merged under the 'CISAC' case.
3. CISAC is the international association of authors' collecting societies. It proposes a standard model contract for the reciprocal representation between its members concerning the management of public performance rights. The other parties to the case are the following EEA collecting societies: AEPI (Greece), AKKA-LAA (Latvia), AKM (Austria), ARTISJUS (Hungary), BUMA (Netherlands), EAU (Estonia), GEMA (Germany), IMRO (Ireland), KODA (Denmark), LATGA (Lithuania), PRS (United Kingdom), OSA (Czech Republic), SABAM (Belgium), SACEM (France), SAZAS (Slovenia), SGAE (Spain), SIAE (Italy), SOZA (Slovakia), SPA (Portugal), STEF (Iceland), STIM (Sweden), TEOSTO (Finland), TONO (Norway), and ZAIKS (Poland).

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25).

4. On 31 January 2006 the Commission sent a Statement of Objections based on Article 81 of the EC Treaty and Article 53 of the EEA Agreement to CISAC and the EEA collecting societies and provided access to the Commission's file. The statement of objections is deemed to constitute the preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
5. Pursuant to the preliminary assessment, two categories of clauses in the CISAC model contract and the reciprocal representation contracts between collecting societies raise concern as to their compatibility with Article 81 of the EC treaty and 53 of the EEA Agreement. These are the 'membership clause' and the 'territoriality clauses':
  - 1) The 'membership clause': While the reciprocal representation contract is in force neither of the contracting collecting societies may, without the consent of the other, accept as member any member of the other society or any natural person, firm or company having the nationality of one of the countries in which the other collecting society operates.
  - 2) The 'territoriality clauses': commercial users can only obtain a licence from the local collecting society. This effect is the result of two different clauses. First, the reciprocal representation is done on an exclusive basis for the respective territory of collecting societies (hereafter, 'the exclusivity clause'). Second, and in any event, the granted licence is limited to the domestic territory of the collecting society, even for the internet, cable retransmission and, with certain exceptions, satellite transmission (hereafter, 'the territorial delineation').
6. The addressees of the Statement of Objections expressed their views in their written replies and during an oral Hearing which took place on 14, 15 and 16 June 2006. Subsequently, CISAC and a substantial number of collecting societies offered the commitments which are the subject to the present notice.

### 3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

7. A majority of the parties did not agree with the Commission's preliminary assessment. They have nevertheless offered to abide by a set of commitments which are designed to remedy the Commission's concerns. The commitments, which concern performing rights, are offered by CISAC and the following collecting societies: AEPI, AKM, ARTISJUS, BUMA, GEMA, IMRO, LATGA-A, PRS, SABAM, SACEM, SGAE, SIAE, SPA, SOZA, STEF, STIM, TEOSTO and TONO (the 'signatory societies').
8. The commitments are briefly summarised below and published in full in English on the website of the Directorate-General for competition, at:  
  
[http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)
9. Concerning the 'membership clauses', CISAC offers not to recommend in relation to the reciprocal representation between EEA societies, and the signatory societies offer to remove from representation agreements with another EEA collecting society, clauses identical, similar or having the same effect as the clause on which the Commission expressed concerns within 30 days of the date in which CISAC and the signatory societies are notified of the European Commission's decision under Article 9(1) of Council Regulation (EC) No 1/2003.
10. Concerning the 'territoriality clauses', CISAC offers not to recommend the granting of exclusive rights between EEA societies and the signatory societies offer to remove, from the representation agreements with another EEA collecting society any clause identical similar or having the same effect as the exclusivity clause at latest 30 days after the date on which CISAC and the signatory societies are notified of the European Commission's decision under Article 9(1) of Council Regulation (EC) No 1/2003.

11. In addition, with regard to the territorial delineation, signatory societies undertake (1) to license their own performing rights repertoire to internet services, satellite services and/or cable services directly across the EEA or (2) to mandate, under certain conditions, each signatory society which fulfils certain qualitative criteria to grant multi repertoire multi territorial performing right licences for internet services, satellite services and cable retransmission services. Concerning internet, the proposed commitments cover all cross border internet websites accessible within the EEA. Concerning satellite transmission, collecting societies located within the area of up link of the broadcast or in which the broadcaster economically targets end-consumers will have the possibility to grant a licence covering the relevant licensing area to the broadcaster which exploits a channel on a multi territorial basis. For cable retransmission services of a satellite broadcast, not only the collecting society in the Member State where the cable operator is located but also the collecting society which grants the licence to the broadcaster will have the possibility to grant a licence for cable retransmissions. This does not apply when a collecting society offers a global licence for cable retransmissions for all transmitted channels at a tariff which is independent of the number of retransmitted channels or when a cable operator has a statutory obligation to re-invoice the royalty fee in respect of the cable retransmission licence to the end-consumer. Notwithstanding the above, the commitments do not preclude the signatory societies from excluding internet services, satellite services and/or cable services from the network of reciprocal representation contracts. Each signatory society shall implement the commitments at the latest six months, in relation to internet service, and nine months, in relation to satellite and cable retransmission services, after the adoption of the European Commission's decision under Article 9(1) of Council Regulation (EC) No 1/2003.
12. All signatory societies which fulfil certain qualitative criteria will have the possibility to issue the multi repertoire multi territorial licences described above. The qualitative criteria are listed in an exhaustive way in the proposed commitments and relate in particular to tariffs, deductions, administrative infrastructure, technical capacities, transparency and rules of distribution.

#### 4. INVITATION TO MAKE COMMENTS

13. The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate General for Competition, to be binding.
14. In accordance with Article 27(4) of Regulation 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words '(commercial secrets)' or '(confidential)'. Legitimate requests will be respected.
15. Observations can be sent to the Commission, under reference number COMP/38698 — CISAC, either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax ((32-2) 295 01 28) or by post to the following address:

European Commission  
Directorate-General for Competition  
Antitrust Registry  
B-1049 Brussels

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