

**Notice pursuant to Article 19 (3) of Council Regulation No 17 (1) concerning a notification in case No IV/32.150 — EBU-Eurovision System**

(90/C 251/02)

1. On 3 April 1989 the European Broadcasting Union (EBU) notified to the Commission its rules governing the acquisition of television rights to sports events, the exchange of sports programmes within the framework of Eurovision and contractual access to such programmes for third parties. In this conjunction it applied for negative clearance or, alternatively, exemption under Article 85 (3) of the EEC Treaty.

### I. The EBU organization

2. The EBU is an association of radio and television organizations set up in 1950 with headquarters in Geneva. It has no commercial aim, its principal objects are: to represent the interests of its members in the programme, legal, technical and other fields and to assist its members in negotiations of any kind; to promote cooperation between its members and with the broadcasting organizations of the entire world and in particular to promote radio and television programme exchanges by all possible means.

3. Active membership in the EBU is open to broadcasting organizations, or groups of such organizations, which provide, in a country situated in the European broadcasting area, a service of national character and national importance. The must also be under an obligation to cover the entire national population and in fact cover at least a substantial part thereof; and must further be under an obligation to, and actually provide varied and balanced programming for all sections of the population, and must themselves produce a substantial proportion of the programmes broadcast.

4. Associate membership is open to broadcasting organizations, or groups of such organizations, from countries outside the European broadcasting area which provide, in their country, a broadcasting service of national character and national importance and offer varied programming.

5. Currently the EBU has 39 active members in 32 countries situated in the European broadcasting area (most of them public service broadcasters) and 61 associate members in 38 countries outside the area.

### II. The Eurovision network

6. All active members are eligible to participate in an institutionalized exchange system for television programmes including sports programmes via a European network known as Eurovision and to participate in a system of joint acquisition of television rights to international sports events — the so-called 'Eurovision rights'.

7. The rules governing the acquisition of Eurovision rights provide that the transmission rights for international sports events are normally acquired jointly by all interested members who then share the rights and the related fee between them. Whenever EBU members from two or more countries are interested in a specific sports event they request coordination from the EBU. As a result negotiations are carried out on behalf of all interested members either by a member in the country where the event takes place or by the EBU itself in accordance with financial parameters and limits set by the members. Once negotiations for Eurovision rights have commenced, and until they have been formally declared to have failed, members are required not to engage in separate negotiations for national rights.

8. When a Eurovision agreement for rights covering several countries or the whole Eurovision area has been finalized, all members participating in the agreement are entitled to the full benefit of the rights regardless of the territorial scope of their activity. However, members who compete for the same national audience have to agree among themselves on the procedure for attributing exclusivity or priority to one of them. If no such procedure can be agreed upon, all the members concerned become entitled to non-exclusive rights with respect to the country or countries in question. Members which provide the coverage of an event are, unless otherwise agreed, automatically entitled to exclusivity *vis-à-vis* other national members and entitled to priority *vis-à-vis* foreign members aiming their broadcast at the same national audience.

9. For events which take place in one of the members' countries the coverage (signal consisting of basic video and international soundfeed) is available via the Eurovision programme exchange system. The Eurovision programme exchange system is based on reciprocity: whenever one of the participating members covers an event, in particular sports events, which takes place on its own national territory and is of potential interest to other Eurovision members, it offers its coverage free of charge to all the other Eurovision members on the understanding that in return it will receive corresponding

(1) OJ No 13, 21. 2. 1962, p. 204/62.

offers from all the other members regarding events taking place in their respective countries. The originating member also provides the necessary infrastructure to other interested members like commentary positions etc. The notified 'rules on use of the Eurovision signal' regulate in detail the use of the offering organization's signal (basic video and international soundfeed), the copyright of which it owns, by the other Eurovision members.

10. If an event takes place outside the Eurovision area, and thus the coverage is produced by a non-EBU member, the members participating in an Eurovision agreement normally have to pay a fee for the use of that other broadcaster's signal, which fee they share between them. However there are reciprocity agreements with broadcasting organizations in other areas under which the signal in some cases is made available free of charge to EBU members.

### III. The sublicensing scheme for non-members

11. Non-members are granted contractual access both to the television rights which the EBU members have acquired under Eurovision sports agreements and to the relevant coverage of sports events which forms part of the Eurovision programme exchange system. At the request of the Commission, the EBU has recently revised its scheme of rules governing sublicences to non-members. Under the new scheme of rules sublicences will now be available on the conditions outlined below.

12. Transnational non-member channels will be granted sublicences by the EBU itself whereas national channels will get sublicences from the EBU member(s) which has acquired the rights for the country concerned.

13. Sublicences are normally only available for deferred transmissions and for news access. However, where the rights to a given sports event for one reason or another are not used by the EBU members (or member) in the country or countries concerned, sublicences will also be available for live transmission. If the relevant EBU members (or member) provide no transmission whatsoever, non-members will be granted the right to live transmission without any restriction. If the EBU members (or member) transmit only summaries of up to 25 minutes, sublicences for live transmissions will be available for events which take place before 18.00 or after 22.00. With regard to events which take place between 18.00 and 22.00, only deferred transmission from 22.00 onward will be permitted.

14. Whenever the relevant EBU members themselves use the rights, sublicences will be available only for

deferred transmissions subject to an embargo that varies from case to case.

If the relevant EBU members transmit only extensive summaries of between 25 and 55 minutes of an event (or of a single day of competition) the embargo lasts until 01.00 of the following day in the case of sublicences to transnational services, and until 15 minutes after the end of the national EBU member's transmission in the case of sublicences to national channels.

If the EBU members transmit more than 55 minutes of an event (or of a single day of competition) the embargo is different according to the duration of the event. For events which last not more than one day the embargo lasts, in the case of sublicences to transnational channels, until four hours after the end of the last prime-time transmission (between 18.00 and 01.00) of the event by the EBU members in the countries covered by the transnational channel. In the case of sublicences to national channels, the embargo lasts until four hours after the first prime-time transmission by the national EBU member which grants the sublicense. For events lasting more than one day the embargo lasts until 02.00 on the day following each day of competition both for sublicences to national and transnational channels.

15. In addition to the embargo there are restrictions regarding the number and the timing of transmissions. Sublicensees are entitled to two transmissions in the case of transnational specialized sports channels and to one transmission only in the case of other channels. Where events last more one day, sublicensees are not entitled to transmissions during prime-time (Monday to Friday: 06.00 to 09.00, 12.00 to 14.00, 18.00 to 01.00; Saturday to Sunday: 12.00 to 01.00). For the Olympic Games, world and European athletic championships and world and European football championships there are further restrictions on the volume of daily transmissions. The maximum daily transmission for the Summer Olympic Games is 180 minutes for transnational sports channels and 75 minutes for other channels; for the Winter Olympic Games and athletics championships it is 120 minutes for transnational sports channels and 60 minutes for other channels, and for football championships it is 45 minutes per match for transnational sports channels and 25 minutes for other channels.

16. News access will be granted to non-members on a strictly reciprocal basis. Non-members will be entitled to up to two news reports of up to 90 seconds each or up to three news reports of up to 60 seconds each per event or per competition day. Each individual report must be included in a regularly scheduled general news bulletin.

17. The sublicence fee will include a fee for the transmission rights (rights fee); a contribution to the costs for the production of the signal (whenever the sublicencee uses the EBU members' signal instead of producing its own coverage); a charge for the routing of the signal (whenever the sublicencee chooses to have the signal routed via the Eurovision network instead of making its own arrangements for the routing of the signal) and a charge for technical and administrative coordination. The rights fee will take into account the fee initially paid by EBU members, the scope of the rights granted to the sublicencee and the number of television households covered by the sublicencee's service. The contribution to the costs for the production of the signal will take into account the number of channels sharing the signal, the duration of the relay or recording made available to the sublicencee and the use for live or deferred transmission. The actual charge for the signal requested by a sublicencee for use for deferred transmissions will be for example per hour: skiing (major events): Swiss francs (SF) 7 440; football (routine matches): SF 3 500; tennis: SF 4 500. The costs for the routing of the signal will amount to between SF 560 and SF 1 400 per 15-minute segment according to the distance and the duration of the transport. The coordination costs will amount to SF 1 500 per transmission.

18. For news access no fee for the transmission rights will be charged but only a lump sum contribution to the costs for the production of the signal and to the network and coordination costs. This fee will amount to SF 125 per 30 seconds segment of material used and per million television households reached by the programme service in question.

19. Where disputes arise the sublicence fee both for general transmissions and news access will be determined by arbitration.

#### IV. The decision envisaged by the Commission

The Commission proposes to take a favourable decision on the rules notified. Before doing so, it invites all interested parties to send their comments within one month of the date of publication of this notice quoting the reference IV/32.150 — EBU-Eurovision System to:

Commission of the European Communities,  
Directorate-General for Competition,  
Directorate for Restrictive Practices, Abuse of Dominant Positions and other Distortions of Competition I,  
200 rue de la Loi,  
B-1049 Brussels.

The complete scheme for sublicensing of Eurovision sports programmes to non-EBU members will be sent to interested parties at their request. Requests should quote the above reference and be addressed to:

Commission of the European Communities,  
Division IV/B-4,  
Avenue de Cortenberg 158,  
B-1040 Brussels,  
Telefax 236 08 08.