COMMISSION DECISION

of 11 June 1993

relating a proceeding pursuant to Article 85 of the EEC Treaty

(IV/32.150 — EBU/Eurovision System)

(Only the English and French texts are authentic)

(93/403/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 4, 6 and 8 thereof,

Having regard to the Commission Decision of 5 December 1988 to initiate proceedings in this case,

Having regard to the application submitted on 3 April 1989 by the European Broadcasting Union for negative clearance, or for exemption pursuant to Article 85 (3) of the EEC Treaty in respect of its internal provisions ('Statutes') and other regulations 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,

Having published, pursuant to Article 19 (3) of Regulation No 17, a summary [2] of the rules and the resultant cooperation under the Eurovision arrangements,

Having given third parties concerned the opportunity to make known their views on the Commission's intention to grant an exemption, pursuant to Article 19 (3) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Regulation No 17 [3],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

(1) On 3 April 1989 the European Broadcasting Union (EBU) notified to the Commission its provisions ('Statutes') and other 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 (EBU model contract for the acquisition of Eurovision rights in a sports event, rules on sharing of transmission rights under Eurovision sports agreements — including relating rules — rules on the use of the Eurovision signal and rules on sub-licences to non-members). In conjunction with the notification it applied for negative clearance or, alternatively, exemption pursuant to Article 85 (3) of the EEC Treaty.

A. 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 support its active members in their task of serving the interests of the general public in the best possible manner, to support and defend in every domain the interests of its members and to assist its members in negotiations of any kind or negotiate at their request on their behalf; to promote cooperation between its members and with other broadcasting organizations or groups of such organizations and in particular to promote radio and television programme exchanges by all possible means ; to prepare and take all measures designed to assist the development of broadcasting in all its forms.

(3) Active membership of the EBU is open to broadcasting organizations or groups of such organizations which provide, in a country situated in the

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 251, 5. 10. 1990, p. 2.
[3] OJ No 127, 20. 8. 1963, p. 2268/63.

European broadcasting area, a service of national character and national importance. They must also be under an obligation to cover the entire national population and must, in practice, cover at least a substantial part thereof while using their best endeavours to achieve full coverage in due course; they must further be under an obligation to provide, and must actually provide, varied and balanced programming for all sections of the population, including a fair share of programmes catering for special/minority interests of various sections of the public irrespective of the ratio of programme-costs to audience, and must themselves produce or commission under their own editorial control a substantial proportion of the programmes broadcast.

(4) A group of broadcasting organizations qualifies for EBU membership as a single member if it is a *de jure* or *de facto* association of broadcastsing organizations from the same country, which individually or — as regional organizations — collectively qualify for EBU membership. Broadcasting organizations which qualify only collectively for membership must meet the specific membership requirements with regard to the respective broadcasting area for which they are licenced. A group may, in addition, include:

(a) an organization which, under domestic law, assumes responsibility for coordination and management of national and international activities on behalf of and in institutional liaison with, the broadcasting organizations forming the group;

(b) an organization whose main function is the operation of technical broadcasting or transmission facilities on a permanent basis on behalf of, and in institutional liaison with, the broadcasting organization forming the group;

(c) broadcasting organizations which provide specialized programme services in coordination with, and in addition to, the other group members' services.

(5) Those requirements limit active membership to broadcasters which have to fulfil a particular public mission to which they are committed by national law and practice, irrespective of the form of organization or the method of financing. Such public mission-oriented broadcasters have to provide a broadcasting service in the public interest regardless of considerations of profitability. This is in particular reflected by their obligation to provide varied programming including cultural, educational, scientific and minority programmes without any commercial appeal and to cover the entire national population irrespective of the costs. They are allowed neither to concentrate irrespective of the costs. They are allowed neither to concentrate on mass-appeal programmes able to achieve high ratings and to generate advertising revenues nor to specialize in certain categories of programme nor to limit themselves to cost-effective coverage of densely populated areas The new, wholly commercial broadcasters which in recent years have been launched in several Member Statets usually fail to fulfil these conditions and accordingly are not admitted as members.

(6) Active membership carries an obligation to further the objectives of the EBU and to contribute actively to radio and television programme exchanges and other EBU activities. After its merger with its eastern European counterpart, Organisation Internationale de Radiodiffusion et Télévision (OIRT) (see recital 8), the EBU has 67 active members (including groupings of television and radio channels) in 47 countries situated in the European braodcasting area. Most of them are public service broadcasters, although there are also some private ones, which are nevertheless public mission-oriented. In most countries there is only one member, the exceptions within the EEC being Belgium, Denmark, France, Germany and the United Kingdom where there are several. Whereas the majority of members are wholly or partly financed by a licence-fee, a number rely in addition, or some even exclusively, on advertising revenue, which revenue is often subject to restrictions (ceilings on advertising revenue, maxima of advertising spots per hour or day, advertising only on weekdays or during certain hours of the day etc.). The members broadcast mainly via terrestrial frequencies, their respective reception areas — notwithstanding some overspill — being predominantly limited to the national territory. However, in recent years some of the members have also started to transmit via satellite and cable, not only to their own national territories but also to other, mainly neighbouring countries.

(7) Apart from active members there is a large number of associate members (currently 54) which do not take part in the Eurovision System. Associate membership is open to broadcasting organizations, or groups of such organizations, from countries outside the European Broadcasting Area which provide, in their respective countries, a broadcasting service of national character and national importance and which offer varied programming.

(8) Following the process of democratization in eastern Europe the EBU has merged with its east European

counterpart OIRT and its members. The merger came into effect on 1 January 1993 and will involve substantial financial and technical aid provided by the EBU and its members to the new members from eastern Europe.

B. The market for the acquisition of television sports programmes

(a) *The development of the broadcasting sector*

(9) In recent years the deregulation of television broadcasting in some Member States, together with the introduction of satellite-to-cable television and — more recently — direct satellite television, has led to the establishment of a number of new, mostly commercial broadcasters. They operate on a regional, national or transnational level, their programmes being transmitted via terrestrial networks and/or via satellite and cable. They are mainly financed by advertising — some also charge a subscription fee — and provide either a diversified range of programmes, including sports, or a specialist service, such as sports, films, news, etc. Between 1984 and 1990, 31 new satellite channels and 25 new commercial terrestrial channels were launched which resulted in significant gains in viewing share by commercial channels in a number of Member States, the situation varying from country to country — for example, Belgium (Flemish community): VTM, 43 % in 1991 (source: CIM); Germany (West only): RTL plus and SAT1, 14,8 % and 11,1 % in 1991 (source: GFK Television Research); Greece: Mega Channel and Antenna TV, 39,8 % and 32,2 % in 1991 (source: AGB Hellas); Italy: Canale 5, Italia 1 and Rete 4, 16,4 %, 10,5 % and 8,9 % (source: Auditel); Netherlands: RTL-4, 23,3 % in 1991 (source: NOS KLO); Spain: Tele 5 and Antena 3, 13,8 % and 8,9 % (source: Ecotel).

(10) Until recently there were in particular the following dedicated sports channels: Eurosport, a pan-European satellite sports channel broadcast in four languages throughout Europe, operated by a consortium of active EBU members and TF1 (Télévision française 1), likewise an active EBU member; The European Sports Network TESN which, via its affiliates Screensport (United Kingdom), Sportkanal (Germany), Sportnet (Netherlands) and TV Sport (France), likewise provided a pan-European programmes service dedicated to sports and broadcast via satellite and cable in four languages throughout Europe; Sky Sports, a satellite channel (direct to home) operated by BSkyB (British Sky Broadcasting), which is aimed at viewers in the United Kingdom and Ireland only. A newly launched sports channel in Germany, Deutsches Sportfernsehen, has existed since the beginning of 1993. Eurosport and TESN have recently agreed to combine forces and to provide one single programme service under the name 'Eurosport'. The relevant agreement which has been notified to the Commission is being dealt with in Case No IV/34.605 — Eurosport Mark III.

(11) The broadcasting sector is thus in a state of transition, with commercial broadcasters entering the market or expanding their activities and gaining a significant audience share. The new commercial channels not only provide for technical innovation (in particular in the cable and satellite field) and for a broader choice for television viewers, they also enhance competition both to the benefit of viewers and advertisers and to the benefit of sports organizers or other persons offering television rights. As their audience share increases, the new commercial channels are becoming considerable competitors to the traditional public broadcasters on both the market for advertising and that for programme procurement. This is reflected by the steadily increasing advertising revenues of private broadcasters (for example, SAT1 (Germany): rise from DM 22,4 million (1,2 % of total West German television advertising expenditure) in 1986 to DM 653,9 million (28,9 %) in 1991, in comparison ARD: fall from DM 1 102,2 million (58,4 %) to DM 483,0 million (21,4 %) in 1991 (source: Nielsen S&P Werbeforschung), and their increasing investments in attractive programme material (see, for example, in the United Kingdom: BSkyB's acquisition, together with the BBC, of five-year exclusive coverage of Premier League football matches at a price of £ 304 million — BSkyB's share in the price being about £ 190 million). In some countries, the national EBU members compete at a growing disadvantage *vis-à-vis* commercial channels, which are in some cases backed by powerful media conglomerates, since the various constraints arising from the EBU members' public mission and in particular the limitations on sponsorship and advertising to which they are subject in a number of countries, often hamper their ability to buy and exploit programmes in a commercially viable way.

(12) A number of commercial channels have set up an association (Association of Commercial Television in Europe (ACT)) in order to represent their common interests and to promote cooperation in different areas including the production of sports programmes. The Commission notes with interest this development. At this stage it is clearly not in a position to evaluate how future developments in this area are to be assessed within the context of the Community competition rules.

(b) *Particular characteristics of sports programmes*

(13) At the moment most of the commercial broadcasters are trying to increase their share of widely popular sports programmes, which, together with the launching of dedicated sports channels, has led to a considerable increase in sports programming on television. Sports programmes covering widely popular sports or major international events are a very attractive programme item for both the traditional public broadcasters and the new generalist commercial channels which want to provide an attractive and balanced schedule of programmes in order to appeal to as wide an audience as possible. As far as partly or wholly advertising-financed channels — both commercial and public broadcasters — are concerned, the importance of certain sports programmes arises from their attraction to advertisers, as described below. As far as public broadcasters are concerned the importance of sports programmes also follows from their public mission to provide a diversified programme for all sectors of the population, which traditionally includes a certain amount of both national and international sports events.

(14) Sports programmes, in particular major international events such as Olympic Games, Football World Cup, international tennis tournaments etc., are often able to achieve high viewing figures, in particular between viewers with a high buying power (males aged between 16 and 50), which is essential for advertisers. Sports programmes are also generally considered to be particularly suited to carrying advertissements, as is reflected by the amount of sponsorship involved. Furthermore, sport is a type of entertainment which to some extent transcends cultural boundaries and is thus uniquely suitable for transnational satellite and cable television and for transnational advertising. Finally, sports programmes reach a readily identifiable audience which is a special target for certain important advertisers and cannot easily be reached by other programmes. As a result, there has been a considerable increase in the demand for sports programmes as a whole in recent years, and increased competition for television rights.

(15) However, the attraction of sports programmes and hence the level of competition for the television rights varies according to the type of sport and the type of event. Mass sports like football, tennis or motor-racing generally attract large audiences, the preferences varying from country to country. By contrast, minority sports achieve very low ratings. International events tend to be more attractive for the audience in a given country than national ones, provided the national team or a national champion is involved, while international events in which no national champion or team is participating can often be of little interest.

(16) On the other hand, some outstanding international events such as the Football World Cup and European Football Championships, the Olympic Games and World and European Athletic Championships etc. generally achieve high viewing figures, the participation and performance of national teams of champions being less important. Because of the high viewing figures and the prestige that the coverage of these events bestows on the broadcaster involved, competition for these rights is strong, whereas there is often little demand for rights to events in minority sports.

(17) Sports programmes can be a rather expensive programme item, the costs and risks associated with the broadcasting of sports events being considerable. In addition to the prices for the rights — which are low for less attractive sports and events but very high for mass-appeal events — the most important factor is the cost of production of the television signal (basic video and sound feed), which is usually very high. This applies in particular to tournaments or championships which take place over a number of days with several events staged at the same time. While only a fraction can be broadcast, most, if not all, of it must be covered in order to be able to broadcast a meaningful selection. The nature of the sport and the terrain on which it takes place may also increase the costs. Commentary costs and studio costs (editing, presentation) must be added to the costs for the production of the signal on the spot, as well as costs for the transport of the signal. Thus the costs of sports programmes are, on average, higher today than the costs for broadcasting a cinematographic film (taking into account the price for the television rights and the necessary processing of the material) or for big entertainment shows.

(18) Moreover, the boradcasting of sports programmes involves a number of risks. The television rights for a sports event must be acquired in advance of the event, but its attractiveness may change considerably depending on how the event evolves and on the actual participation and success of teams or participants appealing to national audiences. In addition, particular risks such as weather, boycotts etc., are involved.

(c) *Difference in approach to sports programming*

(19) According to whether sports programmes are more or less attractive to viewers and hence to advertisers

and according to the costs and risks involved in the broadcasting of sports events, public mission-oriented broadcasters and purely commercial broadcasters often take a different approach to the broadcasting of sports events. Purely commercial broadcasters (with the exception of dedicated sports channels) are more interested in mass-appeal sports events which allow them to attract advertisers and/or to persuade viewers to subscribe to their service or to buy the reception equipment. Public mission-oriented broadcasters, by contrast, also have to cover minority sports or less attractive events, as by virtue of their public mission they also have to cater for minority interests. As a result, public mission-oriented channels normally show a broader range of sports then purely commercial channels.

(20) Furthermore, purely commercial broadcasters are less interested in events which require production efforts that are enormous compared to the broadcasting time devoted to the event. Public mission broadcasters, by contrast, are often prepared to cover an event in full (in terms of production of the signal) even if it can be broadcast only in short extracts, irrespective of cost/revenue considerations, because they consider the provision of extracts to be part of their public mission. Some new commercial channels, in particular some of the new satellite-to-cable channels whose market penetration is still low, often prefer to seek sub-licences for ready-made sports programmes produced by other broadcasters rather than to acquire full rights and produce the coverage themselves.

(d) *Television rights to sports events*

(21) Television rights to sports events are normally granted for a given territory, usually per country, on an exclusive basis. Exclusivity is as a general rule considered to be necessary in order to guarantee the value of a given sports programme, in terms of the viewing figures and advertising revenues which it can achieve. Exclusivity is generally granted for broadcasting by all technical means (terrestrial frequencies, satellite-to-cable or direct satellite) without distinction between terrestrial rights and cable and satellite rights. The rights are often offered as packages and comprise all matches, rounds or competitions forming one event (championship, tournament, cup, league round etc.).

(22) Television rights are normally held by the organizer of a sports event, who is able to control the access to the premises where the event is staged. In order to control the televising of the event and to guarantee exclusivity the organizer admits only one broadcaster (the so-called host-broadcaster, i.e. a broadcaster in the country where the event takes place) or in any case only a limited number of broadcasters to produce the television signal. Under their contract with the organizer they are not allowed to make their signal available to any third party who has not acquired the relevant television rights.

(23) Organizers of widely popular sports events are often rather powerful national or international associations which are in a sort of monopoly situation with regard to television rights to certain events or certain types of sports, as there is usually a single national or international association for each sport.

(24) Nevertheless, for many years prices for television rights to sports events were kept relatively low, as sports organizers were more concerned to secure television coverage in order to attract sponsorship and the widest promotion of their events through television exposure. In recent years, with increased competition for the rights, organizers have become more and more aware of the value of their rights and prices have increased considerably: for instance, the fee for the Eurovision rights paid by the EBU to the International Amateur Athletics Federation (IAAF) for the World Athletic Championships rose from US $ 6 million for the championships in Tokyo in 1991 to US $ 91 million for the two championships in Stuttgart 1993 and in Gothenburg 1995. The fee for the summer Olympics rose from US $ 90 million for the Barcelona Olympics in 1992 to US $ 250 million for the Atlanta Games in 1996. Increasingly, sports organizers have chosen to sell their rights via international rights agencies which have established themselves as intermediaries and deal with the marketing of the rights on purely commercial terms. These intermediates are either independent or are affiliated to commercial broadcasters in whose interests they acquire the rights. In so far as vertical integration between intermediaries and television channels is concerned the Commission is not, at this stage, in a position to evaluate to what extent developments in this area would fall under the Community competition rules. In order to maximize profits, the intermediaries attempt to 'unbundle' the rights by selling them country-by-country to individual broadcasters and by distingui-

shing between rights for live and for deferred transmissions, and rights for highlights only, and by selling those various rights separately. This has resulted in a further increase in prices.

(25) Increased competition from private broadcasters, together with the birth of professional sports rights agencies, have meant that the television rights to certain major international events traditionally broadcast by the established public broadcasters have moved into the hands of new commercial channels. Examples of this include the rights to the Wimbledon Open Tennis Championship, the United States Open Tennis Tournament, the Masters Tennis Tournaments, the World Open Basketball Tournament, the World Ice-Hockey Championship, Formula One Motor Racing and the Paris-Dakar motor rally. At national level, EBU members are increasingly outbid for widely popular national events such as national football with, for example, the German public broadcasters having lost the television rights to their commercial competitors for a number of years. Some other sports organizers have nevertheless sought to maintain their relationship with public broadcasters, as they can guarantee national coverage of their events. A number of organizers, indeed, consider a high-quality television coverage which reaches the entire national population to be a valuable service which not only contributes to the standing of the event and to the popularity of the sport concerned but also increases the value of advertising space in the stadium for advertisers.

C. The Eurovision system

(26) All active members of the EBU 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. Currently, all but three active members (Lebanon, Malta and Vatican) participate in the system. Furthermore, apart from single members, consortia consisting exclusively of active members from different countries which together provide a transnational programme service that is public mission-oriented and complementary to individual members' national channels are likewise eligible to participate in the system.

(a) *Joint acquisition and sharing of television rights*

(27) The rules governing the acquisition of Eurovision rights provide that the television 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 — sometimes assisted by the EBU — in the country where the event takes place or by the EBU itself. 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. Only if joint negotiations have failed are members free to negotiate separately.

(28) The Eurovision rights, which normally exclude non-members, are acquired on behalf of the members who participate in the contract for their respective countries. All members participating in the agreement are entitled to the full benefit or the rights, regardless of the territorial scope of their activity and regardless of their technical means of broadcasting. However, members who compete for the same national audience (several members in one country or members broadcasting from their country into the country of another member in the same language) have to agree among themselves on the procedure for attributing or priority to one of them.

(29) Several members in one country usually agree to share the rights, for example by alternating transmission of the event. 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 (i.e. produce the signal) are, unless otherwise agreed, entitled to priority over foreign members aiming their broadcast at the same national audience.

(30) The joint acquisition of rights normally concerns only international sports events and not national events such as national football, where national EBU members buy the television rights individually on the market, thereby competing with each other in some countries. The percentage of television sports programmes the rights to which have been negotiated and acquired via the Eurovision System varies from country to country. In Germany and the United Kingdom those programmes accounted for 2 % of all sports programmes broadcast on German and British television in 1990. In France the percentage was about 6,6 % in 1990. The total number of contracts for television sports rights negotiated via Eurovision amounted to 45 in 1992.

(b) *The exchange of the signal*

(31) For events which take place within the Eurovision area the coverage (television signal consisting of basic video and international sound-feed) is produced by a member in the country concerned and is available to all other members 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 a sports event, 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 offers from all the other members in respect of events taking place in their respective countries. The originating member also provides the necessary infrastructure to other interested members such as commentary positions, etc.

(32) Since in each country there is at least one EBU member providing and producing sports programmes, it can be taken for granted that essentially all events that are of potential interest beyond national boundaries will be covered (provided that the members have been able to acquire the rights) and will be available to the members throughout the Eurovision area. The reciprocity system does not take account of actual input and withdrawal by individual members. In essence, it amounts to a solidarity system under which the financially more powerful organizations from large countries support organizations from smaller countries with a view to ensuring a board flow of sports programmes to all parts of the Eurovision area.

(33) If an event takes place outside the Eurovision area, and thus the coverage is produced by a non-EBU member, the members participating in a 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 equivalent broadcasting organizations in other areas under which the signal is in some cases made available free of charge to EBU members.

(34) The transport of the signal from the point of origin to the transmission facilities in the individual countries where the event is to be transmitted, is effected via a network which links all Eurovision members with each other. The network consists of permanently leased terrestrial circuits (supplemented on an *ad hoc* basis by occasionally leased terrestrial links) as well as a certain number of terrestrial circuits owned by individual members. These terrestrial links total a length of approximately 18 000 km with over 60 points of injection (not taking into account the circuits of the new members from eastern Europe). In addition, the EBU leases some satellite circuits on a permanent basis and further satellite circuits on an *ad hoc* basis.

(35) Finally, the Eurovision system also provides for administrative and technical coordination. Administrative coordination including programme coordination is carried out by the EBU's permanent services in Geneva or — for example, in the case of the Olympics — by special operation groups, with the object of coordinating the specific needs and desires of the different members and of achieving optimal coverage of as many competitions as possible. It involves, in particular, the planning of scheduling, including dealing with possible time-differences between the site of the event and the members' countries, the selection of competitions in cases where several competitions take place simultaneously, etc. Technical coordination is carries out by the EBU's technical centre which deals in particular with technical planning, monitoring and quality control with regard to the signal itself.

D. The access scheme for non-members

(36) At the request of the Commission, the EBU has revised its scheme of rules governing contractual access for non-members. Under the new scheme submitted on 26 Febraury 1993, the EBU and its members undertake to grant non-member broadcasters extensive access to Eurovision sports programmes for which the rights have been acquired through collective negotiations. The terms and conditions of access are freely negotiated between the EBU (for transnational channels), or the member(s) in the country concerned (for national channels), and the non-member. However, the EBU and its members will in no circumstances grant less favourable access than is stipulated below.

(37) Access for live transmissions is granted if the event is not broadcast live by the EBU member(s) in the country or countries concerned, except for those parts or competitions (particular disciplines, individual matches, rounds, etc.) which the member(s) have reserved for their own live transmission.

If an event (or, in the case of events lasting more than one day, a day of competition) is broadcast live by the EBU member(s) in the country or countries concerned — i.e. if the majority of the principal competitions constituting it are transmitted live — access is granted for deferred transmissions, beginning not earlier than one hour after the end of the event or the last competition of the day and not earlier than 10.30 p.m. local time (London time for pan-European channels). The different

embargos (for events lasting not more than one day, embargo until four hours after the end of the first prime-time transmission (for national channels) or the last prime-time transmission (for transnational channels) of the EBU members in the countries concerned; and for events lasting more than one day, embargo until 2 a.m. following each day of competition) and additional restrictions concerning the volume and timing of transmissions (for events lasting more than one day, no transmissions during prime-time: Monday to Friday 6 a.m. to 9 a.m., 12 noon to 2 p.m., 6 p.m. to 1 a.m., Saturday and Sunday 12 noon to 1 a.m., and maximum volume of daily transmission of, for instance, 75 minutes for Summer Olympic Games or 25 minutes per match of the Football World Cup) contained in the previous sub-licensing scheme which was the subject of the Commission's notice of 5 October 1990, given pursuant to Article 19 (3) of Regulation No 17, have been removed at the request of the Commission.

(38) In addition, news access is granted. Except where national law or regulations provide otherwise, the EBU and its members grant access to two news items of up to 90 seconds each per event or day of competition — with the possibility of repeating one of such reports later the same day — which must be included in regularly scheduled general news bulletins, or in regularly scheduled general sports-news programmes of dedicated sports channels, within 24 hours.

(39) The access fee (for access to the television rights and the television signal) has to be negotiated. For the routing of the signal, the non-member is free to make its own arrangements or may ask the EBU to route the signal via the Eurovision network. In that case the EBU will submit an estimate for the costs.

(40) In the event of a dispute over the access fee where all other conditions of access have been agreed at the request of the non-member the matter will be submitted to arbitration by independent expert(s). The expert(s) will be nominated jointly by the parties. Failing agreement, nomination will be by the president of the competent Court of Appeal in the case of national arbitration (concerning access for national channels) and by the president of the International Chamber of Commerce in the case of international arbitration (concerning access for pan-European channels). The expert(s) shall fix the access fee. The decision shall be final and binding.

The complete text of the scheme can be obtained by interested third parties from the EBU or from the national members.

E. The proceedings

(41) On 17 December 1987 the Commission received a complaint by Screensport (later TESN) concerning:

(i) the refsual of the EBU and its members to grant Screensport sub-licences to sports events;

and

(ii) a joint venture between a consortium of active EBU members and News International/Sky Channel establishing a television sports channel called Eurosport Mark I.

The second part of the complaint was the subject of separate proceedings in Case No IV/32.524 — Screensport/EBU members and of Commission Decision 91/130/EEC [1]. The first part of the complaint was withdrawn following the agreement between Eurosport and TESN referred to above (recital 10).

(42) On 12 December 1988 the Commission sent a first statement of objections to the EBU, declaring that the granting of an exemption to the rules governing the acquisition and the use of television rights to sports events within the framework of the Eurovision System could be envisaged provided that the EBU and its members accepted an obligation to grand non-members sub-licences for a substantial part of the rights in question and on reasonable terms. On 3 April 1989 the EBU notified its relevant rules to the Commission with the aim of obtaining negative clearance or an exemption and indicating that the EBU and its members were prepared to grant sub-licences to non-members. On 12 April 1990 the Commission received a second complaint by Still Moving Films, a United Kingdom-based company involved in the production of sports programmes, likewise concerning the EBU's sub-licensing policy. On 3 July 1990 the EBU adopted a sub-licensing scheme which had previously been the subject of discussions with the Commission.

[1] OJ No L 63, 9. 3. 1991, p. 32.

(43) On 5 October 1990 the Commission published a notice pursuant to Article 19 (3) of Regulation No 17 in the Official Journal indicating its intention to grant an exemption pursuant to Article 85 (3) of the EEC Treaty. Following the publication, the Commission received a number of criterial observations from third parties, including the complainants, mainly concerning the EBU sub-licensing scheme. As a result, the Commission on 18 and 19 December 1990 organized an oral hearing with all interested third parties, at which the sub-licensing scheme, which was found to be too restrictive, too bureaucratic and not workable in practice, was discussed in detail.

(44) On the basis of the outcome of the hearing the Commission on 24 June 1991 sent a supplementary statement of objections, declaring that the sub-licensing scheme was not acceptable. Subsequently, the EBU on 8 November 1991 submitted a new scheme governing contractual access for non-members, in which most of the clauses of the previous sub-licensing scheme which had been criticized by third parties had been removed. After further amendments had been carried out at the request of the Commission, the final version of the scheme was submitted on 26 February 1993.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. *Agreements between or decisions by (an association of) undertakings*

(45) The EBU members are undertakings within the meaning of Article 85 (1). This applies notwithstanding the fact that the majority of members are non-profit-making public institutions entrusted under national law with the task of providing programmes in the public interest. The functional concept of 'undertaking' under Article 85 (1) covers any body carrying on activities of an economic nature regardless of its legal from and regardless of whether it has a commercial aim. Accordingly, the Court of Justice has ruled that public television broadcasting organizations are 'undertakings' within the meaning of Article 85 (1) in so far as they exercise economic activities [1]. The acquisition of television rights to sports events and the granting of sub-licences for such programmes are clearly activities of an economic nature which are covered by Article 85 (1).

(46) The EBU statutory provisions and internal rules relating to the acquisition of television rights to sports events and the exchange of sports programmes within the framework of Eurovision and contractual access for third parties to such rights and programmes are decisions of an association of undertakings, while the case-by-case agreements of individual members concerning the negotiation, acquisition and sharing of the rights are agreements between undertakings within the meaning of Article 85 (1).

2. *Restriction of competition*

(a) Restriction of competition between the EBU members

(47) The EBU rules governing the joint negotiation, acquisition and sharing of television rights to sports events and the related case-by-case agreements between the members have as their object and effect the restriction of competition between the members.

(48) Without the cooperation within the framework of Eurovision, the EBU members would to some extent compete with each other for the acquisition of television rights to sports events. Although it is true that members from different countries usually acquire television rights only for their respective countries and do not, therefore, compete directly with each other for the rights, a competitive situation arises in two cases. First, there are five Member States where there are two or more EBU members (Belgium, France, Denmark, Germany, United Kingdom) which would normally compete with each other for television rights to international events, as they in fact do for rights to national events, which are not covered by Eurovision. Secondly, there is an increasing number of members who broadcast via satellite and cable into other members' countries and who, therefore, would normally have to acquire the rights for those countries in competition with the national members.

(49) As a result of the joint negotiation and acquisition of the right within the framework of Eurovision this competition between the members is greatly restricted if not, in many cases, eliminated. Instead of bidding against each other, members participate in joint negotiations and agree among themselves the financial and other conditions for the acquisition of the rights as well as the way in which they share these rights. The restriction of competition exists notwithstanding the fact that the internal EBU rules governing the negotiation and acquisition of the rights are only recommendations and not legally binding. It follows both from the EBU statutes (Article 13 (4)) and from the nature of

[1] Case 155/73, Sacchi, [1974] ECR, p. 409.

Eurovision as a solidarity system that members bind themselves to respect the common interest and to comply with the internal rules set up in this common interest. As a result, members who are interested in the acquisition of the rights do in fact participate in the joint negotiations, and engage in separate negotiations have officially been declared to have failed. These cases are very rare.

(b) Distortion of competition *vis-à-vis* non-EBU members

(50) On the other hand, competition *vis-à-vis* purely commercial channels, which are not admitted as members, is to some extent distorted. It is a disadvantage for those channels that they cannot participate in the rationalization and cost-savings achieved by the Eurovision system (as described in recitals 58 to 67), which renders the broadcasting of sports events more expensive and complicated for them.

(51) Moreover, the joint negotiation and acquisition of the rights enable the EBU members to strengthen their market position to the disadvantage of their independent competitors. By combining their forces, the EBU members acquire a considerable market power which non-member channels often find difficult to equal. In particular, the fact that the EBU members bid jointly for the rights for a number of countries or the whole Eurovision area gives them an advantage, since international sports federations often prefer to dispose of the television rights for a large area in one transaction instead of becoming involved in negotiations with numerous national broadcasters. However, this advantage is increasingly being eroded by the entry into the market of international sports rights agencies which enable sports organizers to maximize profits by selling the rights country-by-country without involving themselves in various negotiations with individual broadcasters. This has facilitated rights acquisition by non-member channels, especially those commercial channels which are affiliated to sports rights agencies, as is reflected by the number of international events which in recent years have moved into the hands of commercial channels (see recital 25).

(52) Some distortion of competition also results from the fact that consortia consisting of different EBU members and providing a transnational sports programme service participate in the joint acquisition system. This again strengthens the negotiating power of the EBU and its members *vis-à-vis* sports organizers, because in addition to their generalist channels they have the use of a transnational dedicated sports channels which can provide a 24-hour coverage of the sports events in question and ample opportunities for advertising and sponsorship without the programme constraints to which generalist channels are normally subject.

3. *Effect on trade between Member States*

(53) Trade between Member States is affected in that the Eurovision system concerns cross-border acquisition and use of television rights. This applies in particular to the joint acquisition and sharing opf the rights between members from different countries and to the exchange of the related television signal between them.

4. *Appreciability of the restriction of competition and the effect on trade between Member States*

(54) The abovementioned restrictions have an appreciable impact on the market for the procurement of sports programmes. The overall programme procurement market is divided into separate markets for different programmes items, such as feature films, television films and series, shows and games, drama, documentaries, sports, etc. From the point of view of the broadcaster who is seeking programmes and/or the relevant television rights, the different programme items are only to a limited extent interchangeable. In particular, sports programmes can be substituted by other programmes only to a limited extent.

(55) This is demonstrated, first, by the existence of specialized sports channels, which shows that sports programmes are quite distinct from other programmes and have a special audience that justifies a dedicated sports channel. But also from the point of view of generalist channels, sports programmes have special characteristics and are a particularly important programme item. It may be true that feature films or popular television series ('soap operas') or games are able to attract similar or even higher viewing figures than major sports events and that a broadcaster, by scheduling another popular programme, is able to attract viewers away from sports programmes being shown on a competing network. Nevertheless, sports programmes are indispensable for every generalist channel, whether commercial or public. Sports programmes are considered to be part of the traditional programme-mix of a generalist channel and cannot be totally replaced by other programmes.

(56) As far as partly or wholly advertising-financed broadcasters are concerned, this is also due to the attraction of sports programmes to advertisers and to the fact that sports programmes reach an audience which is a special target for certain advertisers and cannot be easily reached by other programmes. As far as public broadcasters are concerned this lack of substitutability also follows from their public mission to provide a diversified programme for all parts of the population, which traditionally includes a certain amount of sports events, both national and international. Public broadcasters consider it part of their public mission to show the most popular events which the entire general public wants to watch.

(57) On the market for sports programmes and the related television rights the abovementioned restrictions are appreciable notwithstanding the fact that the Eurovision System concerns in practice only the broadcasting of international events and does not normally affect the broadcasting of national events. Although international events form only a relatively small proportion of all sports broadcasting, some of them — for example, the Olympic Games or Football World and European Cups — are of such widespread appeal, and of such economic importance, that their impact on the market is not adequately reflected by their expression as a mere percentage.

B. Article 85 (3)

1. *Improvement in the production or distribution of 'goods'*

(58) The Eurovision System provides for a number of benefits which relate to the joint acquisition and sharing of the rights as well as to the exchange of the signal and its transport on the common network and to the contractual access that will be granted to non-members. The various benefits provided by the Eurovision system and the underlying rules constitute a unified whole where each constituent element complements the others.

(a) The joint acquisition and sharing of the rights

(59) Joint negotiations and joint acquisition of the rights lead to an improvement in purchasing conditions. Firstly, they reduce the transaction costs which would be associated with a multitude of separate negotiations. They also guarantee that the negotiations are carried out by the most competent negotiator. This means either the national member in the country where the event takes place, which is familiar with local conditions, or the EBU itself, which has specialized staff experienced in negotiations on an international level. That last practice benefits in particular smaller members who do not have the necessary specialized staff. The cooperation between the members and the coordination of their different interests by the negotiating member and/or the EBU further ensures that the specific interests and needs of all members are taken care of. In separate negotiations members, in particular members from small countries, would find it more difficult to secure contracts suitable for specific needs.

(60) The joint acquisition and the related sharing of the rights further leads to a programme coordination at national level. At national level the joint acquisition and the sharing of the rights by two or more members in the same country usually result in an alternation of the transmission of an event by the members concerned. In the case of events of major interest like the Olympic Games this sharing means that a quasi-permanent coverage can be guaranteed by the alternating members, whereby one of the members transmits the event while the other provides attractive alternatives. If, instead, one of the members had individually acquired the exclusive rights it could individually show much less of the event, given that public mission-oriented broadcasters cannot concentrate on sport but have to provide a diversified programme even at times when major sports events take place.

(61) Furthermore, at international level the sharing of the rights allows members from one country to broadcast into other members' countries, which facilitates cross-border broadcasting. According to the relevant EBU rules, all members participating in the joint acquisition of Eurovision rights are entitled to the full benefit of the rights regardless of the territorial scope of their activity and thus are free to use the rights for transnational purposes (with the exception of the exclusivity or priority granted to the member which produces the coverage). That means, in practice, that members who broadcast via satellite to cable or via a direct broadcasting satellite into other members' countries are free to do so without being obliged to acquire the relevant television rights for these countries. Pending the adoption of the Community directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission and its transposition into national legislation, without the Eurovision System each individual member engaged in transnational broadcasting would be obliged to acquire the television rights for all countries covered by its service (at least as far as broad-

casting via satellite to cable is concerned ; the situation for direct satellite broadcasting is not clear in all Member States). This would be not only very expensive, but also difficult to achieve, considering that television rights are usually granted country-by-country on an exclusive basis. The sharing of the rights under the Eurovision rules therefore facilitates cross-border activities of the participating members and thus contributes to the development of a single European broadcasting market.

(62) The participation of consortia providing a transnational dedicated sports channel leads to a further improvement. On the one hand, it enables EBU members participating in such a consortium to provide a broader range of sports programmes, including minority sports and sports programmes with educational, cultural or humanitarian content, that they cannot show on their national generalist channels. This is not only to the benfit of television viewers, who are offered a larger choice, but also in the interest of organizers of minority sports, which often find it difficult to secure television coverage and thereby attract interest in their events. On the other hand, a pan-European sports channel broadcasting a common programme service throughout Europe contributes to the development of a single European broadcasting market.

(b) The exchange of the television signal

(63) The joint acquisition and sharing of the rights is also a necessary element for the exchange of the television signal, which is the heart of the Eurovision System. The exchange of the television signal results in considerable rationalization and cost-savings in that it allows other members to use the originating member's signal free of charge. In particular, it provides members from smaller countries and their national audiences with programmes they would otherwise find it very difficult to afford in terms of production costs. In addition, the Eurovision System stimulates the production of television signals as a result of the reciprocity system. As a result of reciprocity and solidarity any EBU member will feel obliged to produce the television signal for events taking place in its country, even if it is not itself interested in the event (for instance if no national champion or team is participating), in order to enable other interested EBU members to show the event. This again leads to more sports programmes, in particular minority sports, being produced and shown on television than would be the case without the Eurovision system.

(64) Furthermore, the administrative and technical coordination linked to the programme exchange and carried out by the EBU and the host broadcaster guarantee not only a high-quality signal but also an optimal adaptation to the different needs of the different members in terms of commentary facilities, selection of events in the case of a number of heterogenous or similar competitions or matches taking place at the same time (as in the case of the Olympics, athletic championships etc.), scheduling and presentation of the programmes, etc.

(65) Finally, the Eurovision System provides for reliable transmission facilities by delivery of the signal via a common network. This common network, the costs of which are shared between the members, again provides for considerable rationalization and cost-savings. The long-term planning and coordination of delivery of the signal, which are carried out by the technical centre of the EBU in line with the requirements of the members which share the respective television rights between them, guarantee high-quality programmes for each of the participating members.

(c) The access scheme for non-members

(66) The possibility of contractual access for non-members not only reduces the restriction of competition against non-members but itself also provides for some improvements. Owing to the general increase in sports programmes on television, there is an increasing demand for second, deferred transmissions of major events. In particular, some satellite and cable channels whose technical potential is still low and who would hardly be able to afford the high costs for live or first-run rights and for the production of the signal may find it attractive to offer second, deferred transmissions. Such transmissions are now faciliated under the new access scheme. The setting-up of a common scheme of objective rules which are made public and available to all interested thrid-party channels, makes the access policy of the EBU and its members more transparent and predictable and facilities negotiations by third parties.

(67) Furthermore, it is a special advantage for transnational channels that they can obtain access direct from the EBU instead of having to engage in separate negotiations with the members in each country which is covered by their services. Normally, transnational satellite-to-cable channels seeking access to sports programmes have to reach agreements with a number of different broadcasters who can the rights in the various countries covered by the transnational programme service. In view of the divergent circumstances and interests of the broadcasters concerned, this is very difficult if not, in some cases, impossible to achieve. The EB access scheme, by contrast, provides transnational channels with one negotiator and uniform conditions for all the countries in question, which considerably facilities access by such channels.

2. *Fair share of the resulting benefits for consumers*

(68) Consumers, i.e. the television viewers, benefit from the Eurovision System in that the System enables the members to show more, and higher-quality, sports programmes — both widely popular sports and minority sports — than they would be able to do without the advantages of Eurovision. The Eurovision System enables in particular national members from smaller countries to provide their chair viewers with a broad range of international sports events with a commentary in their own language and tailored to their specific national interests. Moreover, given that the vast majority of members are non-profit-making public institutions, it is likely that the cost-savings they achieve are passed on to their viewers in that they use the money they save for the acquisition of other attractive programmes.

3. *Indispensability of the restrictions*

(69) The restrictions of competition as defined above are indispensable for the achievement of the improvements in question.

(a) Indispensability of the rules governing the joint negotiation and acquisition of the rights and contractual access for non-members

(70) The cost-savings and rationalization resulting from the Eurovision System cannot be obtained by a less restrictive arrangement. It is indeed necessary that members be required to refrain from separate negotiations once joint negotiations have commenced. The success of the joint negociations would be put in jeopardy if individual members simultaneously engaged in separate negotiations for national or transnational rights. It has to be emphasized that members are free to engage in separate negotiations once the joint negotiations are declared to have failed. It is further necessary that members in every single case agree among themselves the financial and other conditions for the acquisition of the rights and the way they share these rights. As every sports event is different from the next and needs a different approach, it is inevitable that the conditions for the acquisition of the rights are agreed between the members on a case-by-case basis.

(71) The access scheme for non-members, which at the request of the Commission has been substantially amended, likewise contains no restrictions which are not indispensable to the attainment of the objectives described above. The new scheme will limit the exclusivity of the rights acquired under Eurovision rights agreements and will provide access for non-members on reasonable terms both in relation to the time and scope of non-member transmissions and to the financial conditions. Earlier, more restrictive conditions have been substantially relaxed. This applies in particular to the restrictions on time, number and volume for non-member transmissions and the embargos. The remaining exclusivity for EBU members is necessary in order to allow them a fair return on their investments (rights fee, cost of production of the signal, etc.). It must be emphasized that EBU members are free to grant contractual access for their national territories on more favourable terms if they wish to do so. As regards the financial conditions, it is also important that any disputes will be determined by arbitration which will ensure reasonable prices.

(b) Indispensability of limiting participation to public mission-oriented broadcasters

(72) It is necessary that membership of the Eurovision System be limited to public mission-oriented broadcasters fulfilling certain objective criteria regarding the production and variety of their programmes and the coverage of the national population. The programme exchange which is at the heart of Eurovision is based on reciprocity and solidarity without taking into account the actual input and output of the individual members. It is understood that each member will use its best endeavours with regard to any international event taking place in its country to negotiate and acquire the television rights on behalf of all interested

members as well as to produce the signal and to make it available to them free of charge. Such a system can only work between public mission-oriented broadcasters who, regardless of cost-revenue considerations, provide the widest possible range of sports programmes as part of their public mission.

(73) It is in particular necessary that the participating members themselves produce a considerable part of their programmes, as opposed to some of the new commercial channels who rather rely on ready-made sports programmes. It is further essential that they provide diversifies programmes for all segments of the population, which means that, as far as sport is concerned, they also cater for minority sports regardless of whether there is a return on the investments involved.

(74) It is also vital that they cover the entire national population. On the one hand, this is necessary in order to ensure that the common network through which the Eurovision members are linked and through which the programme exchange takes place covers the whole Eurovision area and that all members bear a proportional share thereof. On the other hand, it could severely damage the image of the EBU as an organization of public mission-oriented broadcasters providing a programme srvice in the public interest if, because of the limited reception area of some of its members, parts of the national audiences were prevented from watching major events. This would not only incur the displeasure of the television viewers and of public opinion, as recent controversies in some Member States have shown where private channels with a limited reception area have acquired rights to mass-appeal events, thus preventing a part of the national population from watchng these events, it would also weaken the position of the EBU members in negotiations with sports organizers, who often want to reach as large an audience as possible and are in some cases reluctant to sell their rights to broadcasters who reach only a part of the population.

(75) It must be emphasized that the new commercial channels, although they are normally not admitted as members, are nevertheless offered contractual access and thus can also benefit from the Eurovision System. In fact, some of the new commercial channels whose applications for membership have been rejected have nevertheless reached agreements concerning contractual access to certain events with the EBU and/or its members.

(76) It is also necessary that the participation of dedicated sports channels in the Eurovision System is limited to transnational (pan-European) channels which are operated by consortia consisting exclusively of active EBU members and which themselves fulfil a public mission. Purely commercial sports channels, operated by non-EBU members, could not be expected to respect the principles of reciprocity and solidarity which are at the heart of the Eurovision System (see recital 72) and which is, for instance, reflected by a complementarity in programmes between EBU-backed sports channels and EBU members' generalist channels.

4. *No possibility of eliminating competition*

(77) The rules governing the Eurovision System do not allow the participating members to eliminate competition for a substantial part of the products in question. Given that the joint negotiation and acquisition of television rights in practice concern only international events and not national events, which are the majority of sports on television, the Eurovision System affects only a part of the market. Furthermore, it has to be taken into account that even for international events there is increasing competition outside the Eurovision System from independent broadcasters, who have in recent years acquired the rights for a number of events which had traditionally been broadcast by the EBU members.

C. Article 90 (2)

(78) The applicability of Article 85 is not excluded by Article 90 (2). Public mission broadcasters operating under statutory obligations assigned as them by an act of public authority may be entrusted with services of general economic interest [1]. However, there is no risk that the application of the competition rules could obstruct the performance of their particular task, i.e. the provision of varied and balanced programming for all sections of the population, including a certain amount of sport, and the acquisition of the relevant television rights.

(79) Without the benefits of the Eurovision System as described above (recitals 58 to 67) the broadcasting of international sports events and the acquisition of the rights would certainly be more difficult and more costly, with the result that fewer events would be broadcast — in particular by smaller members from small countries. However, the mere fact that the accomplishment of the particular task is rendered more difficult is not sufficient for the undertaking to benefit from the derogation in Article 90 (2). It follows from the clear wording that the accomplishment of the task has to be rendered impossible by the application of the competition rules. Accordingly, the Court has stated that television companies, in so far as in some Member States

[1] See Case 155/73 (Sacchi), *op. cit.*

they are entrusted with services of general economic interest, have to abide by the competition rules provided that to do so is not demonstrably incompatible with the accomplishment of their task (1). This is, at least for the time being, not the case.

D. Articles 6 and 8 of Regulation No 17

(80) In accordance with Article 6 (1) of Regulation No 17, this Decision should be declared applicable from the day on which the amended scheme of rules governing contractual access for non-members was submitted, i.e. 26 February 1993.

(81) Given the structure and development of the relevant market and the effect of the notified rules thereon, exemption should be granted pursuant to Article 8 (1) of Regulation No 17 for five years.

(82) In order to ensure contractual access for third parties to the television rights to sports events acquried within the framework of Eurovision such contractual access must be allowed under the agreements with the rights owners (sport organizers or rights agents). The EBU and its members, therefore, must be under an obligation to finalize only agreements which either allow the EBU and its members to grant access or allow the rights owners to grant access to third parties in accordance with the access scheme or, subject to the approval of the EBU, on more favourable conditions.

(83) In order to assist the Commission during the exemption period in checking whether the conditions for exemption continue to be fulfilled and whether in particular the membership conditions and the rules on contractual access are applied in an appropriate, reasonable and non-discriminatory way, the EBU must be required to inform the Commission of all amendments and additions to the rules notified, of all arbitration procedures concerning disputes under the access scheme and of all decisions regarding applications for membership by third parties,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty the provisions of Article 85 (1) are hereby declared inapplicable for the period 26 February 1993 to 25 February 1998, to the EBU's internal provisions ('Statutes') and other regulations concerning 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.

Article 2

The declaration of exemption contained in Article 1 shall be subject to the following obligations:

1. the EBU and its members shall collectively acquire television rights to sports events only under agreements which either allow the EBU and its members to grant access or allow the rights' owners to grant access to third parties in conformity with the access scheme or, subject to the approval of the EBU, on conditions more favourable to the non-member;
2. the EBU shall inform the Commission of any amendments and additions to the rules notified, of all arbitration procedures concerning disputes under the access scheme and of all decisions regarding applications for membership by third parties.

Article 3

This Decision is addressed to the:
European Broadcasting Union
Ancienne Route 17A
CH-1218 GRAND-SACONNEX (GENEVA).

Done at Brussels, 11 June 1993.

For the Commission
Karel VAN MIERT
Member of the Commission

(1) See Case 155/73 (Sacchi), *op. cit.*