II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 June 1997

pursuant to Article 90 (3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(97/606/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Having given the Belgian authorities and the private television company Vlaamse Televisie Maatschappij NV notice to submit their comments on the Commission's objections to the monopoly on television advertising in Flanders,

Whereas:

I. THE FACTS

The State measure

(1) This Decision relates to the monopoly granted to the private company Vlaamse Televisie Maatschappij NV ('VTM') by the Flemish community of the Kingdom of Belgium to broadcast television advertising aimed at the Flemish community as a whole.

The Flemish legislation on the media was consolidated by the Decree of the government of the Flemish community of 25 January 1995, which was ratified by the Decree of the Council of the Flemish community of 23 February 1995, hereinafter referred to as the 'Codex' ([1]). The Codex consolidates the provisions of the Decree of 28 January 1987 on the retransmission of radio and television programmes on the radio and television cable networks and the approval of non-public television companies (hereinafter referred to as 'the 1987 Decree' ([2])), the Decree of 12 June 1991 laying down rules on radio and television advertising and sponsorship (hereinafter referred to as 'the 1991 Decree' ([3])) and the Decree of 4 May 1994 on radio and television cable networks and the authorization required to establish and exploit such networks and on the promotion of the broadcasting and production of television programmes (hereinafter referred to as 'the 1994 Cable Decree' ([4])).

Pursuant to the second paragraph of Article 80 of the Codex, the Flemish Government may authorize only one of the broadcasters belonging to it or approved by it to broadcast commercial and non-commercial advertising aimed at the Flemish Community as a whole. This provision of the Codex originates in the 1991 Decree, Article 3 of which contains an identical provision.

Pursuant to Article 41, point 1, of the Codex, only one private broadcaster may be authorized by the Flemish Government to broadcast to the entire Flemish community. This provision is taken from Article 7 (1) (a) of the 1987 Decree. As for the

([1]) *Belgisch Staatsblad/Moniteur belge,* 30 May 1995.

([2]) *Belgisch Staatsblad/Moniteur belge,* 19 March 1987.
([3]) *Belgisch Staatsblad/Moniteur belge,* 14 August 1991.
([4]) *Belgisch Staatsblad/Moniteur belge,* 4 June 1994.

structure of any such private broadcaster, Article 8 (1) of the 1987 Decree laid down *inter alia* that it should have the status of a private company at least 51 % of whose capital should be subscribed by publishers of Dutch-language newspapers and magazines having their head office in Flanders or in Brussels. Article 44 (1) of the Codex did not maintain the requirement concerning the location of the shareholder's head office but did require that 51 % of the company's capital be subscribed by publishers of Dutch-language newspapers and magazines. Article 39 (2) of the Codex maintained the provision of the 1987 Decree requiring the head office of the private broadcasting organization to be located in Flanders or Brussels.

(2) These provisions, read together, mean that only one private company having its head office in Flanders or Brussels and 51 % of whose capital is held by Dutch-language publishers may be authorized to broadcast television advertising in Flanders from its territory and aimed at the Flemish community as a whole.

It emerges from parliamentary documents concerning the 1987 Decree and from statements by representatives of the Flemish executive referred to in those documents that the purpose of granting a monopoly on television advertising was to protect existing Flemish newspaper and magazine publishers. According to the official statements of the Minister for Cultural Affairs contained in the parliamentary documents, the Decree was to be adopted in order to prevent the entry of foreign operators onto the Flemish television market (1). Such protection aimed at allowing all television-advertising revenues to accrue to the Flemish press would, according to the Minister, compensate the latter for the loss of advertising revenues it was experiencing. The exclusive right conferred on VTM thus pursued a cultural objective, namely, the maintenance of pluralism in the press.

The undertaking

(3) VTM is a private Dutch-language television company established in Flanders. By Decision of the Flemish executive of 19 November 1987, adopted on the basis of the 1987 Decree, VTM was approved as the only private television company authorized to broadcast to the Flemish community as a whole. This exclusive authorization was granted for a period of 18 years.

By Royal Order of 3 December 1987 (confirmed by a decision of the Flemish Government dated 11 December 1991, adopted on the basis of the 1991 Decree), VTM received authorization to broadcast advertising during its programmes for a period of 18 years.

Thus the consequence of the abovementioned legislative acts and the relevant provisions of the Codex is that VTM is the only private television company to be authorized by the Flemish Government to broadcast television programmes and television advertising aimed at the whole Flemish community. The only other Flemish television company available to the Flemish community, the public radio and television company BRTN, which is run and owned by the Flemish community, is not authorized to broadcast television advertising. The monopoly granted to VTM runs until 2005.

(4) VTM was formed in 1987 by nine associates, all having interests in the Flemish press and each holding 11,1 % of its capital.

At present, the company Vlaamse Media Holding ('VMH') holds 55,55 % of VTM's shares. VMH is owned in equal proportions by De Persgroep NV and Roularta Media Group NV.

VTM's other shareholders are: Tijdschriften Uitgevers Maatschappij NV, Tijdschriften Vereniging Vlaanderen NV and Perexma NV, all of which are subsidiaries of the Netherlands media group Verenigde Nederlandse Uitgeverijen (VNU). All of VTM's shareholders are active, either wholly or in part, in the Flemish press sector. Only De Persgroep NV publishes daily newspapers, while the others operate on the magazines market.

The first- and third-largest Flemish press groups, Vlaamse Uitgevers Maatschappij NV and Concentra Holding NV, do not own shares in VTM. According to the CIM, the Belgian press monitoring agency, the only publisher of daily newspapers with a stake in VTM currently holds a market share on the Flemish newspaper market of 28,3 % (2).

(1) Report of the Flemish Parliamentary Committee on the Media No 152 of 28 November 1996, pp. 3 to 4, and minutes of the plenary session of the Council of the Flemish community of 17 December 1986, p. 325.

(2) Centrum von informatie over de media/Centre Information Médias, data for 1995 to 1996.

The service

(5) The economic activity to which this Decision relates is that of the broadcasting of television advertising to the Flemish public as a whole.

Television is a major advertising medium in the Community. The usual indicator used to assess the development of advertising is that of gross investment by advertisers. Advertising investment in the mass media (television, press, radio, cinema and poster advertising) increased as follows in Belgium in the period 1989 to 1993: 1989: ECU 648 million; 1990: ECU 709 million; 1991: ECU 756 million; 1992: ECU 849 million; 1993: ECU 908 million; 1994: ECU 951 million. In 1994, the breakdown of total advertising investment in Belgium (ECU 951 million) was as follows: television: ECU 351, 5 million; newspapers and magazines: ECU 404 million; radio: ECU 88,2 million; cinema: ECU 10,1 million; poster advertising: ECU 97,3 million [1].

Advertising investment in television saw the following trend in Belgium: 1989: ECU 192 million; 1990: ECU 253 million; 1991: ECU 253 million; 1992: ECU 281 million; 1993: ECU 303 million; 1994: ECU 351,5 million. In percentage terms, these amounts make up between 29,5 % and 35,5 % of total investment in the mass media in the years 1989 to 1992. During the period 1991 to 1993, this percentage remained more or less stable at close to 33 %. In 1994 it amounted to 34,5 %, and in 1995 to 35,2 % [2]. In Flanders, such investment amounted to ECU 186 million in 1993 and ECU 211 million in 1994. Of this amount, the 11 regional channels in Flanders received 1,5 % in 1993 and 5 % in 1994 [3]. VTM received 98,5 % in 1993 and 95 % in 1994, equivalent to ECU 183 million and ECU 201 million respectively. All Flemish channels combined received a market share of advertising investment of 34,3 % (33,8 % going to VTM) in 1993 and 36,3 % (34,5 % going to VTM) in 1994.

(6) The more than 90 % of households in the Flemish community connected to the cable network are able to receive television programmes from channels in other Member States in addition to those of the two Flemish broadcasters (BRTN and VTM) and the French-language Belgian channels.

Even if it is assumed that television programmes from other Member States do compete to a certain extent with Flemish programmes, the fact is, as the Commission has already indicated in the Court proceedings in Case C-211/91 Commission v. Belgium [4], that the stations in question are not substitutes for the Flemish channels BRTN and VTM and the Dutch channels as far as the Flemish audience is concerned, because an overwhelming part of this audience is not interested in programmes broadcast in any language other than Dutch, as is shown by the market shares in Flanders for 1995 (January to June 1995, peak viewing times, namely, 7 to 10 p.m.): VTM: 43,3 %; VT4: 3,5 %; BRTN: 26,5 %; the public channels in the Netherlands: 6,2 %; the non-Dutch-language channels RTBF: 10,8 % and Eurosport 0,7 %. No figures are available for the non-Dutch-language channels TF1, RTL and BBC in this period; in 1994 they had market shares of 0,9 %, 0,7 % and 0,6 % respectively [5]. Flemish viewers' lack of interest in television programmes broadcast in a language other than Dutch is not contradicted by the high percentage of households that are connected to the cable television network in the Flemish community.

Consequently, the Commission considers that channels broadcasting television programmes in a language other than Dutch are not good substitutes for the Flemish television channels.

(7) As regards the channels broadcast from the Netherlands, Dutch-speaking Belgians seem to be more interested in them than in the foreign non-Dutch-language channels. As indicated above, in 1995 (January to June, peak viewing times, namely, 7 to 10 p.m.) the audience share in Flanders for all Netherlands public channels combined was 6,2 %, while VTM's share was over 43 % and BRTN's was 26,5 % [6]. However, in view of the fact that television advertising on the Netherlands channels is

(1) *Statistical yearbook. Cinema, television, video and the new media in Europe.* Edition 1995, European Audiovisual Observatory (EAO), Strasbourg, 1995, pp. 279, 282.
(2) MediaMarkt 1996.
(3) EAO Statistical yearbook 1994, p. 267.
(4) ECR [1992] I-6757, at p. 6763.
(5) EAO Statistical yearbook 1995, p. 171.
(6) Ibid.

neither entirely nor mainly targeted at Belgians, these channels are not a substitute for VTM as far as television advertising is concerned (BRTN being disregarded since it does not broadcast advertising). The advertising market is still a national market, largely because of restrictions on the cross-border supply of advertising space. The result is that conditions of competition vary between Belgium and the Netherlands. In Belgium, VTM is authorized to broadcast television advertising and sell advertising spots. In the Netherlands, the organization which has responsibility for selling advertising spots on behalf of the public channels, STER, does not take account of the impact which the advertisements broadcast by those channels might have in Flanders. The Flemish audience is therefore not included in the parameters used by STER to calculate its price for advertising spots [1]. For its part, VTM does not sell advertising spots in the Netherlands, since its programmes are not carried by the Dutch cable operators. Moreover, differences exist between Belgium and the Netherlands in terms of the rules governing advertising. For example, advertising aimed at children is prohibited in Flanders. It is also forbidden to broadcast advertising less than five minutes before or after children's programmes. Finally, the range and combination of the advertising broadcast are generally determined by the preferences of the audience at which it is targeted. Consequently, the territories of Belgium and the Netherlands should be considered to constitute two separate advertising markets.

(8) In its reply, VTM stated that the television channels Eurosport and Superchannel broadcast television advertising aimed at the Flemish public. The Belgian authorities pointed out in their letter of 14 September 1995 that the channels MTV, CNN, TF1 and RTL also broadcast such advertising. Neither the Belgian authorities nor VTM have indicated the volume of advertising broadcast by these channels aimed at the Flemish public compared to their total advertising. As was stated above, the audience shares of TF1 and RTL in Flanders were 0,9 % and 0,7 % respectively in 1994 [2].

Other proceedings linked to this case

(9) The abovementioned provisions (see point 1) of Article 8 of the 1987 Decree requiring that 51 % of the capital of the new private company be held by publishers of daily or weekly newspapers or magazines in the Dutch-language having their head office in the region of Flanders or in the bilingual capital region of Brussels capital were the subject of proceedings initiated by the Commission on 8 August 1991 against the Kingdom of Belgium for its failure to meet its obligations pursuant to Article 52 of the EC Treaty. In the same proceedings, the Commission also contested the compatibility of Article 3 of the Decree with the Community rules on freedom to provide services. Within the meaning of Article 8, television programmes from other Member States could not be transmitted via the cable network unless they were in the language or one of the languages of the country of origin. Moreover, the programmes of foreign private broadcasters had to obtain authorization from the Flemish executive, which had the power to impose conditions before granting such authorization.

It is true that the 1994 Cable Decree repealed the requirement that television programmes from another Member State should be in one of that State's national languages. However, it nevertheless maintains the system of prior authorization in the region of Flanders. The new provisions were the subject of fresh proceedings brought by the Commission against Belgium before the Court of Justice [3]. The Court ruled that, by maintaining the system of prior authorization, the Kingdom of Belgium had failed to fulfil its obligations within the meaning of Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities [4]. These provisions are not at issue here.

As was indicated above, Article 44 (1) of the Codex repeals the requirement concerning the location of the shareholder's head office in Flanders or Brussels, but maintains the requirement that 5 % of the capital of VTM be held by Dutch-language newspaper publishers. These provisions are the subject of a reasoned opinion notified to the Belgian authorities on 15 May 1997.

[1] This is apparent from the analysis of the goegraphical market for television advertising carried out by the Commission in its Decision in Case IV/M. 553 *RTL/Veronica/Endmol* (OJ L 134, 5. 6. 1996, p. 32).

[2] EAO Statistical yearbook 1995, p. 171.

[3] Case C-11/95 *Commission v. Belgium* [1996] ECR I-4115.

[4] OJ L 298, 17. 10. 1989, p. 23.

(10) Claiming that the monopoly on television advertising in Flanders favours the private broadcaster VTM and disadvantages foreign television broadcasters, the company VT4 Ltd ('VT4') has lodged a complaint with the Commission. VT4, whose sole shareholder is the Luxembourg company Scandinavian Broadcasting System SA (SBS), is a company established in London under English law, whose main activity is to broadcast television programmes. On 13 September 1994, VT4 obtained a licence from the United Kingdom authorities to broadcast programmes via satellite (a 'non-domestic satellite broadcasting licence'). Since 1 February 1995, VT4 has been broadcasting television programmes under that licence.

VT4's programmes are targeted at the Flemish public. They are either produced or sub-titled in Dutch.

The television signal is transmitted towards the satellite from UK territory. By letter of 17 October 1995, the UK authorities informed the Commission that VT4 falls under UK jurisdiction within the meaning of Article 2 (1) of Directive 89/552/EEC.

By letter of 13 July 1995, the Commission asked the Belgian Government to provide details concerning the compatibility of the Flemish legislation on the television-advertising monopoly with the Community rules on freedom to provide services. The Belgian Government's reply of 14 September 1995 states that the wording of the legislation in question does not prohibit television channels established in other Member States from broadcasting advertising targeted at the Flemish public and that, consequently, it is consistent with Article 59 of the Treaty.

However, the Flemish authorities do not consider VT4 to be a broadcaster approved by another Member State, on the ground that it is a Flemish broadcaster established in the UK in order to circumvent the legislation of the Flemish community. Moreover the Flemish authorities argue that VT4 falls outside the scope of Article 10 (1), point 2, of the Cable Directive, which requires cable operators to distribute the programmes of the authorized non-public television company covering the Flemish community as a whole: this is so because VTM is the only authorized private broadcaster. For these reasons, VT4 was, by Ministerial Order, refused access to the Flemish cable network [1]. This Order was suspended by the Belgian *Raad van State/Conseil d'État*, which then referred the matter to the Court of Justice for a preliminary ruling with a view to determining which broadcasters fall within a Member State's jurisdiction within the meaning of Directive 89/552/EEC. By judgment of 5 June 1997 [2], the Court ruled that, where a television broadcaster is established in more than one Member State, it falls within the jurisdiction of the Member State on whose territory its centre of activities is located. The Court also considered that the mere fact that all of its programmes are targeted at a Flemish public does not mean that VT4 cannot be regarded as being established in the United Kingdom.

II. LEGAL ASSESSMENT

Article 90 (1)

(11) Article 90 (1) of the EC Treaty states that where Member States grant special or exclusive rights to particular undertakings they may not enact or maintain in force any measure contrary to the rules in the Treaty. That an undertaking should hold an exclusive right is not in itself incompatible with the Treaty. But while Article 90 implies that undertakings may enjoy certain special or exclusive rights, it does not follow that all special or exclusive rights are necessarily compatible with the Treaty [3]. Their compatibility has to be assessed in the light of the various rules in the Treaty to which Article 90 (1) refers.

VTM is a private undertaking to which the Flemish Community has granted the exclusive right to broadcast advertising aimed at the Flemish public as a whole. The exclusive right derives from a State measure, namely the Flemish Decree of 1991 (and in particular the second paragraph of Article 3 thereof, which became the second paragraph of Article 80 of the Codex already referred to) in conjunction with the 1987 Decree (and in particular Article 7 (1) (a) thereof, which became Article 41, point 1, of the Codex).

[1] Order of the Flemish Minister for Cultural Affairs and for Brussels of 16 January 1995.
[2] Not yet published.
[3] See Case C-320/91 Corbeau [1993] ECR I-2563.

(12) Article 52 of the EC Treaty states that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished'.

VTM's monopoly on the broadcasting of television advertising aimed at the Flemish public prevents any operator from another Member State from establishing itself in Flanders, or setting up a secondary establishment there, with a view to broadcasting television advertisements aimed at the Flemish public via the Belgian cable distribution network.

The provisions at issue apply without distinction to undertakings established in Belgium, other than VTM, and to undertakings from other Member States; but this does not serve to take the preferential treatment of VTM outside the scope of Article 52 of the Treaty.

This is so because the fact that television advertising is restricted to a single, domestic undertaking means that all of the market in television advertising, or at least most of it, benefits the home economy. The object and the effect are incontestably protectionist. That the purpose of granting a legal monopoly to VTM is discriminatory can be seen clearly from the circumstances: the conditions laid down in the 1987 decree excluded all nationals of other Member States at the outset, and it was the avowed intention of the Flemish executive and Council to establish a monopoly corporation controlled by the Flemish press, and to prevent any access by foreign television companies to the Flemish broadcasting system.

As has already been said, the Belgian Government's letter of 14 September 1995 states that the rules on the executive right do not prevent a broadcaster established in another Member State from broadcasting Dutch-language programmes and advertising aimed at the Flemish public as a whole. But a broadcaster of that kind would be under a serious competitive disadvantage as compared with VTM, because it would have to operate at a distance from its Flemish viewers and from its advertisers' market.

Even if these measures do apply without distinction to non-Belgian operators and to Belgian operators other than VTM, it has to be concluded that they constitute a disguised form of discrimination whose effects are protectionist. If such effects do genuinely apply without distinction, they would have to be accepted if they are found to be justified by imperative requirements in the public interest, are suitable for securing the attainment of the objectives which they pursue, and do not go beyond what is necessary in order to attain it [1].

(13) In the course of the proceedings in Case C-211/91 *Commission v. Belgium,* cited above, the Belgian authorities put forward the argument that part of VTM's advertising revenue was transferred to the press as compensation for the loss of income due to the introduction of commercial advertising on radio and television, so that the intention was to maintain pluralism in the Flemish press. Thus the Flemish Government initially invoked arguments of cultural policy to justify the granting of a monopoly in television advertising to VTM. But in the light of the present structure of VTM, and of developments in the media and in the Flemish press, where there have been several mergers and alliances, the Flemish Government now takes the view (in its letter of 11 February 1997 in reply to the Commission's letter of 10 January 1997) that this measure is no longer likely to secure an objective in the public interest. The Flemish Government doubts, therefore, whether the measure qualifies for the saving clause in Article 90 (2).

VTM, however, is still arguing along these lines. According to VTM, the transfer of advertising revenue to the publishers of Flemish newspapers is an essential component in the function given to it in the public interest, and is directly related to its monopoly right. Another aspect of this function is the way in which it complements the public broadcaster, BRTN, and the local television stations, especially by providing a general news and information service on an independent basis and by broadcasting educational and entertainment programmes.

The Commission accepts that a cultural policy and the preservation of pluralism, which is an aspect of the freedom of expression, may constitute imperative requirements in the public interest such as to justify the restriction of the freedom of establishment. But the means to those ends must not limit the freedoms established by the Treaty any more than is necessary. The objectives in the present case

[1] See Case C-55/94 Gebhard [1995] ECR I-4165.

must not be prusued by methods which eliminate any competition which the domestic broadcaster might otherwise have to face from media organizations wishing to establish themselves in Belgium in order to distribute their own advertisements via cable distribution networks: that would deprive Article 52 of any effect whatsoever.

The Commission takes the view that in this case there is no necessary relationship between the purported cultural policy objective of preserving pluralism in the Flemish press and the grant in Flanders of a private commercial television monopoly to VTM. First, the Codex does not guarantee every Flemish newspaper publisher, without distinction, the right to become a shareholder in VTM or to receive a return from its profits. If a newspaper publisher did not take part in the setting-up of VTM, which is the case for example of those that entered the Flemish press market after 1987, the law does not confer it any entitlement to share in the profits generated by VTM. The exclusive right conferred on VTM merely favours one group of publishers at the expense of others. The publishers enoying this privilege are given a secure monopoly income guaranteed by law, which will enable them to compete more effectively with any competitors or new entrants to the Flemish press market, including those from other Member States. In addition, there is no guarantee that VTM's advertising revenue, which is divided among the shareholders in proportion to their holdings in the capital, will be used by them to help their newspapers to overcome possible financial difficulties. Such revenue might equally well be used for activities having no cultural purpose whatsoever, and quite unconnected with support for the Flemish press. Thus, VTM's monopoly runs counter to the stated objective of ensuring pluralism in the Flemish press.

Secondly, the conditions laid down in the Codex regarding the structure of the only private television corporation in Flanders to have received the authorization of the Flemish executive, that is to say the provisions reserving 51 % of VTM's capital for Flemish press publishers, are ill-suited to the attainment of the stated cultural aim, since it is not impossible that VTM's capital, and more particularly the reserved 51 % portion, might come to be concentrated in the hands of a single shareholder, at the expense of any preservation of pluralism in the media. Indeed, whereas VTM had originally consisted of nine shareholders, only five are left today (1).

Turning to the question of the viability of broadcasting stations, there is no reason to suppose that a private television station cannot survive in the Flemish community without a monopoly on television advertising. Indeed, the fact that VTM in 1995 launched a second television channel carrying advertising shows that it believes that more than one private channel can be profitable in Flanders.

To sum up, the Commission does not believe that VTM's monopolization of advertising revenue is justified on imperative grounds in the public interest. To ensure the pluralism which it hopes to maintain, the Flemish Government could have recourse to appropriate measure which do not impede economic integration to so great an extent.

(14) Article 90 (2) provides for an exception to the application of the Treaty rules in the case on undertakings 'entrusted with the operation of services of general economic interest' in so far as the application of those rules would obstruct the performance, in law or in fact, of the particular tasks assigned to them.

The Belgian authorities have not cited this saving provision. In any event, VTM would not appear to be entrusted with the operation of a service of general economic interest. Article 41 of the Codex merely authorizes VTM to arrange television broadcasts aimed at the Flemish community. The provisions of the Codex requiring VTM to ensure balance in its programming, to contribute to the general development of the Flemish public, to maintain objectivity in its journalism and not to broadcast programmes contrary to public morals or security do not stand as evidence that VTM has been assigned a task of general economic interest by the Flemish authorities. These are very general requirements in respect of VTM's programme content; in no way do they point to the conclusion that the Flemish community has given VTM the task of carrying out one of its cultural policies. A distinction has to be made between, on the one hand, the conditions of authorization which a private television corporation must satisfy on grounds of public interest, that is to say conditions of the kind imposed on VTM, and on the other hand the State's assignment to a private firm of a task in the public interest. The Commission notes that the Codex expressly gives the responsibility of acting as a 'public television corporation' to BRTN, whose capital is held by the Flemish community. As well as having to perform this role as a 'public

(1) As was explained in paragraph 9, those conditions are the subject of the Reasoned Opinion of 15 May 1997.

television corporation', BRTN is subject to specific public service obligations, requiring it for example to carry Flemish Government broadcasts and party-political broadcasts, and to provide air time for associations representing various schools of thought. None of these requirements applies to VTM. A recent amendment to the Codex further specifies the public service obligations imposed on BRTN, which is to be renamed VRT. VRT is here required to conclude a management contract with the Flemish authorities which will spell out VRT's public service mission in more detail (1).

Lastly, even if it were to be accepted that VTM has a public service function, the means by which it is to be performed, namely the exclusive rights which are the subject of this Decision, affect trade to an extent which is disproportionate and contrary to the intesrests of the Community, and such as to deprive Article 52 of any effect despite the fact that effective competition in television advertising in Flanders would facilitated if other television broadcasters were permitted to establish themselves there. The fact that they would then be operating close to their audience and to their advertisers would make their work easier and less burdensome,

HAS ADOPTED THIS DECISION:

Article 1

The second paragraph of Article 80 and Article 41, point 1, of the Codex of Flemish rules on radio and television broadcasting, sponsoring and cable distribution, which provide that the Flemish Government may authorize only one private broadcaster to broadcast to the Flemish community as a whole and to broadcast commercial and non-commercial advertising to that Community, that broadcaster being the private television company Vlaamse Televisie Maatschappij NV, and the Decision of the Flemish executive of 19 November 1987 and the Royal Order of 3 December 1987, confirmed by a Decision of the Flemish executive of 11 December 1991, by which VTM was recognized as the sole private television company broadcasting to the Flemish community as a whole and was authorized to include commercial advertising in its programmes, are incompatible with Article 90 (1) of the EC Treaty, read in conjunction with Article 52 thereof.

Article 2

The Belgian authorities shall bring to an end the infringement referred to in Article 1, and shall inform the Commission within two months of notification of this Decision of the measures they have taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 26 June 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

(1) Decree of 29 April 1997 on the conversion of BRTN into a limited company established under public law: *Belgisch Staatsblad/Moniteur belge,* 1 May 1997.