

Court of Justice of the European Communities: Refusal of Exclusive Rights Holder to Allow Publication Is Abuse of a Dominant Position

IRIS 1995-5:1/3

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Broadcasters refusing to sell programme listings to publishers breach EC law. This is the result of the recent decision of the Court of Justice of the European Communities in the Magill Case. The procedure started in 1986 with a complaint of an Irish publisher named Magill. The broadcasters BBC, ITV and RTE used copyright protection of their programme listings to prevent Magill from publishing a comprehensive weekly television guide. Each of the broadcasters wanted to publish its own television guide. They had already done this for many years and consumers had to buy two television guides to be fully informed about the programmes of all broadcasters. Magill lodged a complaint at the European Commission which decided that the practices of the public broadcasters were in breach of EC competition law (see OJ EC 1989 Nr L 78: 43). In 1991, the Court of First Instance upheld the Commission's decision (see Decision of the Court of First Instance of the EC of 10 July 1991, T69, 70 and 76/89). RTE and ITV appealed to the Court of Justice.

The Court of Justice states that the Commission was right in deciding that the British broadcasters occupied a dominant position in the meaning of Article 86 EC Treaty in the market of programme listings and therefore in the market of weekly programme guides. Third parties wishing to publish a comprehensive television guide are dependent upon them to obtain programme listings. Furthermore the Court of Justice upholds the decision of the European Commission on the issue of abuse of the broadcasters' dominant position. Entry into the British market of a new product, a comprehensive television guide, was hampered. This was to the detriment of British consumers who were forced to buy two television guides. Another element of abuse was considered to be the retainance of a dominant position in a derivative market (of weekly television guides) by the public broadcasters. The Court makes it very clear that copyright ownership does not qualify for an exemption of EC competition law, an argument that was put forward by the broadcasters. The parties can also not rely on the Berne Convention in a case like this. In intra-Community relations, broadcasters are subject to the provisions of the EC-Treaty which have priority. Another issue raised was the power of the Commission on the basis of Regulation No 17. The Commission decided that the broadcasters had to license Magill to use their programme listings. In other words, the Commission used Regulation No 17 for the purpose of compulsory licensing. The broadcasters denied that the Commission had

competence to do so. The Court, however, made it clear that Regulation No 17 enables the Commission to end the abuse of market power and that in this case, compulsory licensing was a necessary measure.

Decision of the Court of Justice of the EC of 6 April 1995 in Cases C-241/91 and C-242/91 Intellectual Property Owners Inc. (IPO) v. Commission of the European Communities and Magill TV Guide Ltd.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61991CJ0241:EN:PDF>

