[NL] Refusal of Broadcasting Organisations to License their Television Listings in Breach of Competition Act

IRIS 1998-4:1/19

Annemique de Kroon
Institute for Information Law (IViR), University of Amsterdam

In his report of 13 March 1998, the Director-General of the Dutch Competition Authority (DCA) rendered his provisional opinion on the complaint of De Telegraaf (publisher of a vast number of newspapers and magazines) with respect to the refusal of both NOS (Dutch Broadcasting Foundation) and HMG (Dutch Media Group) to grant De Telegraaf a licence to publish their lists of television programmes in a weekly television guide. The Director-General considers this refusal to be a breach of the new Dutch Competition Act, which was introduced on 1 January 1998.

This case resembles to a certain extent the Magill case in which the European Court of Justice decided that a refusal to grant a licence constituted an abuse of a dominant position within the meaning of Article 86 EC (see IRIS 1995-5: 5). In the Magill case, however, no comprehensive weekly TV guide was available on the market. Each of the broadcasting organisations published a TV guide which only contained its own programmes.

Up until now, Dutch courts had decided that a refusal to grant a licence did not constitute a breach of competition law. In, for example, the TV Krant op Zondag decision (Pres. Rb. Amsterdam, 16 April 1992, MediaForum 1992-5, B35) the court held that refusing a licence was not an abuse of a dominant position. According to the Director-General of the DCA a mere refusal to provide third parties with information does not in itself constitute an abuse of a dominant position. In this case, however, there are exceptional circumstances that make the refusal a breach of competition law. Fundamentally, the policy of NOS and HMG to grant licences is meant to shield the market for weekly programme guides from competition. Granting licences only to other broadcasters is not justified because in doing so, the market for weekly television guides is strictly reserved to broadcasters, to the exclusion of non-broadcasters, which amounts to discrimination. Access of third parties to the market for comprehensive weekly TV guides is denied and therefore, competition is being hampered considerably.

Public broadcasting organisations in the Netherlands are being awarded broadcasting time on the basis of the number of members they have. Subscribers to their TV guides become members automatically. As of 1 February 1998, as a result of the revised Media Act, subscription to a programme guide and membership of a broadcasting organisation are no longer related. The Director-

© European Audiovisual Observatory (Council of Europe) 2026

General, therefore, does not accept the argument of NOS that the public broadcasting system would be undermined by this decision.

-

Dutch Competition Authority, report of the Director-General, No 1/40.R44, 13 March 1998

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026